

**Commissioner of the N.Y. City Dept. of Social Servs. v
Buckeye Coach LLC**

2024 NY Slip Op 33956(U)

November 7, 2024

Supreme Court, New York County

Docket Number: Index No. 150122/2024

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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THE COMMISSIONER OF THE NEW YORK CITY
DEPARTMENT OF SOCIAL SERVICES,

Plaintiff,

INDEX NO. 150122/2024

MOTION DATE 04/26/2024

MOTION SEQ. NO. 004

- v -

BUCKEYE COACH LLC, CARDUAN TOURS LLC, CLASSIC
ELEGANCE COACHES LLC, COASTAL CREW CHANGE
COMPANY LLC, EJECUTIVO ENTERPRISES INC., EL
PASO UNITED CHARTERS LLC, GARCIA AND GARCIA
ENTERPRISES INC., JY CHARTER BUS INC., LILY'S BUS
LINES INC., MAYO TOURS, INC., NORTENO EXPRESS
LLC, ROADRUNNER CHARTERS INC, SOUTHWEST
CREW CHANGE COMPANY LLC, TRANSPORTES
REGIOMONTANOS INC., VLP CHARTER LLC, WINDSTAR
LINES INC., WYNNE TRANSPORTATION LLC,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 97, 98, 99, 100, 101, 104, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 122, 124, 125, 127, 135, 136, 137, 138, 139, 140, 141, 142

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, and after oral argument, which took place on September 23, 2024, where Steven Banks, Esq. and Jacob Kumerick, Esq. appeared for Plaintiff the Commissioner of the New York City Department of Social Services (“Plaintiff”); Nyall Cook, Esq. appeared for Defendant Roadrunner Charters Inc.; Mark Levine, Esq., Elliot Kudisch, Esq., and Douglas Stevinson, Esq. appeared for all the other defendants (collectively “Defendants”), and Beth Haroules, Esq. appeared as amicus curiae for the New York Civil Liberties Union and the ACLU of Texas, Defendants’ motion to dismiss Plaintiff’s Complaint is granted. Plaintiff’s cross-motion to lift the automatic stay of discovery is moot.

I. Background

Plaintiff commenced this case to prevent migrants from moving to New York City from Texas. Plaintiff relies on New York Social Services Law § 149, an antiquated and unconstitutional law to achieve this goal. The statute has its origins in “anti-pauper” statutes passed after the War of 1812. The statute’s title is “Penalty for Bringing a Needy Person into the State.” It is a penal statute and makes it a misdemeanor for anyone to bring knowingly an indigent person to New York “for the purpose of making him a public charge” (*see* Social Services Law § 149[1]). Plaintiff also seeks indemnification from Defendants for the costs of sheltering migrants.

Plaintiff previously sought to enjoin Defendants from busing migrants in motion sequence 001. The Court rejected the request for injunctive relief finding § 149 unconstitutional (NYSCEF Doc. 128). This Court specifically held that the issue of mass migration within the country “is an issue reserved by the Constitution for Congress, lest the United States fall to a regime of balkanization with each state setting forth a patchwork of inconsistent criteria for crossing state lines.” Indeed, it is for this reason the U.S. Supreme Court ruled many decades ago an essentially identical California statute unconstitutional (*Edwards v California*, 314 US 160, 172 [1941]).

The Court is cognizant of the financial burdens borne by the City of New York in providing shelter and services to the many migrants who have sought refuge and opportunity in this diverse and welcoming city. The City’s budget, services, housing availability, and affordability have undoubtedly been taxed in part by ensuring its obligations under the recognized right to shelter are not breached (*see, e.g. Callahan v Carey*, 12 NY3d 496 [2009]). However, it is not the role of this Court to create policy, be it immigration, budgetary, or social services. Rather, it is this Court’s role to ensure the law is upheld, including this nation’s highest law, the United States Constitution.

The Defendants move to dismiss Plaintiff's Complaint in its entirety on the grounds that New York Social Services Law § 149 is unconstitutional. They offer a plethora of doctrines under which § 149 may be deemed unconstitutional, not least of which is the impermissible infringement on interstate commerce. Plaintiff opposes and argues that under a facial challenge to the statute, Defendants must show there are no set of circumstances under which the statute may be considered constitutional. Plaintiff argues that § 149 is narrowly tailored because it only addresses "bad actors" who transport indigent folks into New York for the purpose of making them public charges. She further argues that the burden on interstate commerce is only incidental. In reply, Defendants argue that the burden on interstate commerce is not merely "incidental" because it severely hampers the transportation of individuals across state lines. They further argue that the statute infringes on a fundamental right and does not pass strict scrutiny as it is not narrowly tailored. Defendants argue that in such circumstances, the law is *per se* invalid.

II. Discussion

As previously stated by this Court, § 149 violates the Interstate Commerce Clause pursuant to the United States Supreme Court's decision in *Edwards v California*, 314 US 160, 172 (1941). Simply put, the States are not permitted to regulate the interstate transportation of individuals based on economic status (*see also Heart of Atlanta Motel, Inc. v US*, 379 US 241, 279 [1964] [the right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel, and coal across State lines] [Dougllass, J. concurring]). This is an issue reserved by the Constitution for Congress.

However, § 149's violation of the Interstate Commerce Clause is not the only reason the statute is unconstitutional. The statute also violates a fundamental right – the right to travel – and is subject to strict scrutiny (*Attorney General of New York v Soto-Lopez*, 476 US 898 [1986]; *see*

also Deide v Day, 676 F.Supp.3d 196 [SDNY 2023]). Under a strict scrutiny analysis of a statute that impinges upon a fundamental right, the government must adopt the least restrictive means of achieving the compelling state interest (*Americans for Prosperity Foundation v Bonta*, 594 US 595 [2021]). “States do not have a right to select their citizens.” (*Saenz v Roe*, 526 US 489 [1999]). The fundamental right to travel across State lines encompasses travel for the purpose of “temporary sojourn” or to become a permanent resident (*Edwards, supra*, at 183 [Jackson, J. concurring]). State law implicates the constitutional right to travel when (a) it actually deters such travel; (b) when impeding travel is its primary objective; or (c) when it uses any classification which it serves to penalize exercise of that right (*Soto-Lopez, supra* at 904).

Here, § 149 implicates the constitutional right to travel on all three grounds. First, the record reflects that it has deterred interstate travel since Defendants have stopped transporting migrants from Texas to New York due to the threat of legal liability. Second, deterring interstate travel is plainly a primary objective of § 149 since it expressly aims to prohibit individuals from transporting indigent folks into New York. Finally, § 149 expressly and impermissibly utilizes economic class to penalize the right of certain individuals from traveling into New York. Therefore, a strict scrutiny analysis of § 149 is appropriate (*see also Memorial Hospital v Maricopa County*, 415 US 250 [1974]; *Anonymous v City of Rochester*, 13 NY3d 35 [2009] [“For an adult, there is no doubt that this right is fundamental and an ordinance interfering with the exercise of such a right would be subject to strict scrutiny”]).

Although the Commissioner’s application of § 149 may conceivably serve compelling interests, the statute is not narrowly tailored to address those interests. Pursuant to the statute, individuals who transport indigent individuals with the knowledge they will seek social services in New York potentially face criminal charges. The same statute threatens civil liability and

requires those who knowingly transport indigent individuals to either indemnify New York or arrange for the transported indigent individuals to be removed from New York. The statute in essence requires companies and individuals to conduct “due diligence” into a passenger’s economic status prior to bringing them into the State of New York to avoid criminal and civil liability. This is a sweepingly overbroad statute, the likes of which has already been declared unconstitutional by the U.S. Supreme Court in *Edwards v California*, 314 US 160, 172 (1941). Enforcement of a statute like § 149 foists legal uncertainty on anyone who transports someone to New York. This uncertainty undoubtedly chills individuals’ fundamental right to interstate travel. Therefore, § 149 is not narrowly tailored and fails to pass the strict scrutiny test.

The proper forum to reach a solution to the issues presented in this lawsuit is the United States Congress. Instead, of seeking resolution in Congress, the Commissioner asks this Court to enforce an antiquated, unconstitutional statute to infringe on an individual’s right to enter New York based on economic status.¹ Therefore, the Commissioner’s Complaint is dismissed. Because the case is dismissed, Plaintiff’s cross motion seeking to lift the automatic stay of discovery is moot.

Accordingly, it is hereby,

ORDERED that Defendants’ motion to dismiss Plaintiff’s Complaint is granted; and it is further

ORDERED that Plaintiff’s cross-motion to lift the stay on discovery is moot; and it is further

¹ The Court does not consider Plaintiff’s September 12, 2024 letter as it constitutes an impermissible sur-reply.

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

11/7/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION			
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/>	SUBMIT ORDER		
				<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE