**Freedom Taxi**

Problem #1: Spring 2022

Freedom Taxi is a small taxi service operating in Houston, Texas. It has a business model that is a mix of old school taxis and newer services such as Uber and Lyft. Basically, people phone or text a Freedom dispatcher stating the desired start and destination of their journey. And Freedom quotes them a price that depends on distance, time-of-day and current demand. Freedom has started advertising on local talk radio that, unlike Uber, Lyft and other services, it doesn’t require its drivers to wear masks and it doesn’t require its passengers to wear masks unless the passenger has an airport or other transportation hub such as a bus station, cruise-boat terminal as an origination or destination point. Freedom’s advertisement ends with “Freedom isn’t a Fauci cab. If you want to wear a mask fine. But on our trips, you’re free to make your own decision.” Freedom’s business has tripled since it started advertising a few weeks ago. It now has 50 drivers instead of 25 and brings in about $50,000 in revenue per week, although its revenue declined over the past few days when several drivers called in sick. Freedom has received letters of support from people not only in Texas but also in Louisiana where the talk radio broadcasts can be picked up.

Two days ago, Freedom’s CEO, Libby Erte, received a letter from the United States Attorney for the Southern District of Texas. She advises Ms. Erte that Freedom’s voluntary-mask policy violates an order issued by the CDC available here (<https://www.cdc.gov/quarantine/pdf/Mask-Order-CDC_GMTF_01-29-21-p.pdf>) and that, unless Freedom provides assurances that it will comply with the masking mandate on all trips and stops advertising that it will flout CDC regulations, the United States will bring criminal charges against the company and her.[[1]](#footnote-1)

Ms. Erte has come to you, the regular lawyer over the past five years for Freedom Taxi on perhaps less exciting things such as city licensing requirements, wage and hour disputes, taxation issues, etc., and asked for your honest views on the likelihood that a criminal prosecution would succeed over an argument – Ms. Erte has been starting to read legal blogs – that the CDC mask mandate is an unconstitutional attempt to regulate intrastate commerce. Ms. Erte says Houston isn’t like one of those east coast cities where taxis cross state lines all the time. She is not aware of any occasion in which a Freedom Taxi crossed state lines during the course of a journey. She says that about 80% of her drivers’ trips are from home to office or home to business and do not involve trips to transportation hubs. She also says some of her drivers choose to wear a mask, including two who believe they got COVID while previously driving without a mask, and that she is fine with that. She understands that Harris County is now under “Condition Red” due to COVID. But she fears that many of the drivers hate masking, particularly as the weather gets warmer, and that forcing them to wear one could cause her to lose employees. On the other hand, Ms. Erte would prefer not to face a prison term or a hefty fine.

Ms. Erte has asked you for an email letting her know your thoughts on the commerce clause issues involved.[[2]](#footnote-2) She’s told you in the past – as with many younger lawyers, you tend to be verbose – that she stops reading after 700 words and so there is no point in writing any more than that. Two other things. Before deciding to own a taxi company, Ms. Erte was a high school English teacher. She hates spelling and grammar errors, particularly any that an automated checker would notice and most particularly dangling participles. Second, she hates needless use of passive voice.[[3]](#footnote-3) In the past, when you sent an email that contained sentences in needless passive voice, she sent you this link. <https://thewritelife.com/passive-voice/>. Write an email to Ms. Erte providing your thoughts on the commerce clause issue. Do not discuss separation of powers or any other constitutional issues that, by the end of the semester, you recognize might be brewing in this fact pattern.

1. Assume that no governmental entity in Texas has an effective rule requiring passengers in taxis to wear masks. [↑](#footnote-ref-1)
2. There may well be first amendment issues posed by the Freedom Taxi problem. Ms. Erte thinks that the threat to prosecute her for saying she will flout the CDC rules violates her first amendment rights. She doesn’t want you to write about that today. Not only that, at least one of her drivers believes that requiring passengers to wear masks violates his religious precepts. The driver pointed to a situation where a passenger was stranded in a bad neighborhood in the rain and did not have a mask handy. The driver, who usually does politely request passengers to wear masks, decided that it would be “un-Christian” to deny boarding to that passenger. She thinks having to fire that driver would also constitute a first amendment problem. She says to hold your thoughts on that issue until a later time. [↑](#footnote-ref-2)
3. You had a long discussion a few weeks ago with Ms. Erte about passive voice after you sent an email that offended her. She acknowledges that, in the hands of masters, passive voice can sometimes be useful. She even sent you a web link taking that perspective. t.ly/4vH8. The problem, Ms. Erte says, with acknowledging that utility is that most writers aren’t master stylists and telling them that passive is OK leads to overuse. Ms. Erte says to use a “beyond a reasonable doubt” standard; only use passive voice when it makes sense to do so beyond a reasonable doubt. [↑](#footnote-ref-3)