

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CAROLYN W. LYONS,	:	CIVIL ACTION
as Executrix for the Estate of	:	
John F. Lyons,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.,	:	
Defendants	:	NO. 98-2662

Newcomer, J. June , 1999

**M E M O R A N D U M**

Presently before the Court are the following Motions, responses thereto, and replies thereto:

(1) The Motion for Summary Judgment of Defendants City of Philadelphia, Mary Rose Loney, Lynn McDevitt, Bohdan Korzeniowski, Lawrence Kelly, Mark Liciadello and John Doe City 1 through N ("City defendants' Motion"); and

(2) Defendants' Motion for Summary Judgment (Parkway defendants' Motion").

For the reasons that follow, the City defendants' Motion will be granted and the Parkway defendants' Motion will be denied as moot.

**A. Background**

Plaintiff, the executrix of her late husband John F. Lyons' estate, brings the instant action against the City of Philadelphia, various City employees, Parkway Corporation, Parkway Garage, Inc., and Parkway employees for damages arising from a fatal heart attack suffered by Mr. Lyons on May 23, 1996 while in the taxi holding lot at the Philadelphia International

Airport. In short, plaintiff claims that because of the City defendants' and Parkway defendants' failure to provide emergency telephone service at the taxi holding lot, medics arrived on the scene too belatedly to help Mr. Lyons and Mr. Lyons therefore died of oxygen deprivation to his brain.

According to plaintiff, the Philadelphia airport is an enclave with its own emergency communications system, accessed by a 3111 emergency number, as opposed to the 911 emergency number. Plaintiff claims that as of December 24, 1993, the City and Parkway intended to install emergency telephone service at the taxi holding lot. However, on May 1, 1994, after the City, through the Department of Aviation, began to charge cab drivers a \$1.50 fee for picking up passengers at the airport, the cab drivers, including Mr. Lyons, protested against this new policy by boycotting the airport and holding a strike. According to plaintiff, on May 24, 1994, the City decided to reverse or indefinitely defer the decision to install emergency telephone services in the taxi holding lot. Plaintiff claims that the City violated Mr. Lyons' constitutional rights by withholding emergency telephone service in retaliation for his First Amendment activities and in discrimination against taxi drivers in general who are allegedly composed mainly of ethnic minorities. Plaintiff also claims that due to the Parkway defendants' negligence in failing to respond adequately to Mr. Lyons' medical emergency, including Parkway's failure to provide emergency telephone service at the holding lot, Mr. Lyons did not

receive emergency care in a timely manner and therefore died from prolonged deprivation of oxygen to his brain.

Plaintiff brings the following claims against the City defendants: (1) a First Amendment claim under 42 U.S.C. § 1983 for retaliation against the taxi drivers, including Mr. Lyons, for their exercise of their First Amendment rights to rally and protest, by withholding emergency telephone service from the taxi holding lot; (2) a Fourteenth Amendment equal protection claim under 42 U.S.C. § 1983 for intentional discrimination against the taxi drivers on the basis of race and/or alienage by withholding emergency telephone service from the taxi holding lot while providing the same service to every other area of the airport; and (3) a Title VI claim under 42 U.S.C. § 2000d for discriminating against taxi drivers, who are allegedly primarily ethnic minorities, under a program or activity receiving federal financial assistance. Plaintiff also brings a state law claim of negligence against the Parkway defendants on the grounds that Mr. Lyons, having paid \$1.50 to enter the holding lot, was a business invitee, and that the Parkway defendants breached their duty to him by failing to provide for any means of communication to quickly summon emergency medical assistance, and failing to select and train Parkway employees to respond appropriately to a medical emergency. All defendants now move for summary judgment.

**B. Summary Judgment Standard**

A reviewing court may enter summary judgment where there are no genuine issues as to any material fact and one party

is entitled to judgment as a matter of law. White v. Westinghouse Elec. Co., 862 F.2d 56, 59 (3d Cir. 1988). The evidence presented must be viewed in the light most favorable to the non-moving party. Id. "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). In deciding the motion for summary judgment, it is not the function of the Court to decide disputed questions of fact, but only to determine whether genuine issues of fact exist. Id. at 248-49.

The moving party has the initial burden of identifying evidence which it believes shows an absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Childers v. Joseph, 842 F.2d 689, 694 (3d Cir. 1988). The moving party's burden may be discharged by demonstrating that there is an absence of evidence to support the nonmoving party's case. Celotex, 477 U.S. at 325. Once the moving party satisfies its burden, the burden shifts to the nonmoving party, who must go beyond its pleadings and designate specific facts, by use of affidavits, depositions, admissions, or answers to interrogatories, showing that there is a genuine issue for trial. Id. at 324. Moreover, when the nonmoving party bears the burden of proof, it must "make a showing sufficient to establish the existence of [every] element essential to that party's case." Equimark Commercial Fin. Co. v. C.I.T. Fin. Servs. Corp., 812

F.2d 141, 144 (3d Cir. 1987) (quoting Celotex, 477 U.S. at 322). Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." White, 862 F.2d at 59 (quoting Celotex, 477 U.S. at 322).

**C. Discussion**

1. Claims against City Defendants

a. § 1983 Equal Protection Claim

Plaintiff brings two separate claims under 42 U.S.C. § 1983. Section 1983 imposes civil liability upon one "who acting under color of any statute, ordinance, regulation, custom or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and the laws." 42 U.S.C. § 1983. Thus, § 1983 provides a civil remedy only for acts which deprived a person of some right secured by the Constitution or the laws of the United States.

Plaintiff's first claim is that the City defendants violated Mr. Lyons' constitutional right to equal protection of the laws by treating cab drivers differently from the rest of the airport population in that the City failed to provide emergency telephone service to cab drivers while providing the same service

to the rest of the airport population.<sup>1</sup> Plaintiff claims that ethnic minorities comprise a majority of the cab driver population, that cab drivers are therefore a suspect classification, and that therefore the different treatment of the cab drivers cannot pass the strict scrutiny test of constitutional permissibility. In the alternative, plaintiff claims that the different treatment of cab drivers does not bear a rational relationship to any legitimate state interest.

To bring a successful claim under § 1983 for a denial of equal protection, plaintiff must prove purposeful discrimination. Keenan v. City of Philadelphia, 983 F.2d 459, 465 (3d Cir. 1992). She must demonstrate that she received different treatment from that received by other individuals similarly situated. Id. As noted by the Third Circuit, the Supreme Court held in Washington v. Davis, 426 U.S. 229 (1976) that intent is a prima facie element of any Constitution-based civil rights claim of discrimination, thus distinguishing the constitutional standard for discrimination from the standard

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<sup>1</sup> The Court notes that the parties have not raised or briefed the more troubling issue of whether the denial of a benefit, such as emergency telephone service, comes within the ambit of the Equal Protection Clause, in view of the fact that no legislation or rule is at issue in this case. The only classification allegedly drawn in this case is a de facto classification of cab drivers pursuant to a decision (or nondecision) not to install telephone service at the taxi holding lot. Whether such a classification constitutes an actionable classification under the Equal Protection Clause is questionable. However, as the parties have not raised or briefed this issue, the Court assumes for the purposes of the instant Motion that the classification of cab drivers is a viable classification for an Equal Protection analysis.

promulgated under Title VII. Commonwealth of Pennsylvania v. Flaherty, 983 F.2d 1267, 1273 (3d Cir. 1993). The Court held that disparate impact, without more, will not trigger strict scrutiny of racial classifications, unless the disparate impact cannot be rationally explained on non-racial grounds. Id. It is now well-established that a prima facie showing of discriminatory intent may be proven indirectly, on the totality of the relevant facts, including disparate impact, if coupled with some other indicia of purposeful discrimination. Id. The burden of proof then shifts to the defending party. Id. It must be noted, however, that in Davis, the Supreme Court held that the discriminatory impact of the facially neutral police officer's test at issue, without more, did not warrant the conclusion or inference that the test was a discriminatory device. Id. Thus, under the Davis standard, plaintiff must provide more than evidence of disparate impact in order to prove intentional discrimination. Id.

In the instant case, the City defendants argue that plaintiff has failed to produce any evidence tending to show intentional discrimination. The Court agrees. Taking as true plaintiff's assertion that the cab driver population is composed mainly of ethnic minorities and that only the cab drivers were deprived of emergency telephone service, the Court nevertheless finds that plaintiff has failed to produce any evidence demonstrating intentional discrimination on the part of the City based on the cab drivers' race or alienage. In plaintiff's

confusing array of responsive briefs containing almost no legal argument and only a recitation of the so-called facts, the Court can discern no evidence from which the Court can infer discriminatory intent on the part of the City defendants. While plaintiff argues at length that the City defendants' refusal to acknowledge their decision not to install emergency telephones in the holding lot reflects improper motives and that the failure to install emergency telephone service created a dangerous and oppressive condition for cab drivers, such contentions fall far short of demonstrating any indicia of purposeful discrimination. Likewise, while plaintiff argues that some members of the Rendell administration considered cab drivers to be shabby, unbathed, unable to speak English, and potentially disruptive, such evidence does not then logically lead to the inference that racial animus motivated the City defendants' alleged decision not to install emergency telephone service. Even assuming that the City viewed cab drivers as an unruly bunch who were a liability in the City's efforts to promote tourism, such evidence is nevertheless a far cry from evidence of purposeful discrimination based on the cab drivers' race or alienage. Plaintiff has not produced any evidence from which a reasonable jury could conclude that the City defendants' noninstallation of telephone services at the holding lot was in any way related to the cab drivers' race or alienage. The Court is therefore satisfied that plaintiff's equal protection claim for race discrimination fails as a matter of law. For the same reasons, plaintiff's Title VI

claim for discrimination under a program receiving federal financial assistance also fails.

In the alternative, plaintiff contends that the City's disparate treatment of cab drivers, by failing to provide emergency telephone service at the taxi holding lot, is not rationally related to any legitimate state purpose and is therefore violative of plaintiff's right to equal protection of the laws. A state-created "classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." Alexander v. Whitman, 114 F.3d 1392, 1407 (3d Cir. 1997). Rational basis review in equal protection analysis is not a license for courts to judge the wisdom, fairness, or logic of legislative choices; nor does it authorize the judiciary to sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that affect neither fundamental rights nor proceed along suspect lines. Id. at 1408. For these reasons, a classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity. Id. Such a classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. Further, state action that creates these categories need not actually articulate at any time the purpose

or rationale supporting its classification. Id. Instead, a classification must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification, whether or not the basis has a foundation in the record. Id. Finally, a classification does not fail rational-basis review because it is not made with mathematical nicety or because in practice it results in some inequality. Id. Only when the classification rests on grounds wholly irrelevant to the achievement of the state's objectives does a statute fail rational basis review. Id.

In the instant case, the subject of the Court's review is not a statute passed by the state legislature but the City's alleged inaction in failing to install emergency telephone service in the taxi holding lot while providing such service to the rest of the airport population. Assuming, arguendo, that such inaction can be the subject of equal protection review, and assuming that the City did indeed differentiate between cab drivers and the rest of the airport population by installing emergency telephone service elsewhere but not at the taxi holding lot, plaintiff still would be hard-pressed to argue that no reasonably conceivable state of facts exists showing a rational basis for the distinction, whether or not contained in the record. Indeed, plaintiff herself takes note of defendants' argument that the expense of installing telephone service at the holding lot was too great and that the City allocated its

resources to provide phones to its employees and customers. The Court finds that this is at least one conceivable state of facts showing a rational financial justification for not installing telephone service at the holding lot. Her protestations about the "life-threatening danger" to taxi drivers notwithstanding, plaintiff has failed to meet the high standard of showing no rational basis for the City's failure to install emergency telephone service at the holding lot, and accordingly her § 1983 equal protection claim fails in its entirety.

b. 1983 First Amendment Retaliation Claim

Plaintiff also brings a § 1983 First Amendment claim for retaliation. To bring a successful § 1983 claim for retaliation for the exercise of First Amendment rights, plaintiff must show (1) that she engaged in protected activity; (2) that the defendant responded with retaliation; and (3) that her protected activity was the cause of the retaliation. Anderson v. Davila, 125 F.3d 148, 161 (3d Cir. 1997). Plaintiff claims that the City retaliated against plaintiff and other cab drivers by deciding not to install emergency telephones as originally planned because of the cab drivers' boycott and protest against the City's decision to charge cab drivers a \$1.50 egress fee for picking up fares at the airport. The City defendants attack the third prong of plaintiff's retaliation claim, arguing that no evidence exists showing that the failure to install telephone service at the taxi holding lot was in any way related to the taxi drivers' boycott and protest of the egress fee.

Assuming that Mr. Lyons engaged in protected First Amendment activity, and that the noninstallation of telephones at the holding lot could constitute retaliation, the lynchpin to plaintiff's claim would be whether she can show a causal connection between the taxi drivers' protest of the fee and the City's noninstallation of the telephones. The Court finds that plaintiff cannot. Viewing the evidence in a light most favorable to plaintiff, all that plaintiff has come up with is that the City was concerned about the cab drivers' strike. According to plaintiff's evidence, City officials were kept apprised of the boycott situation, the situation was considered a "hot topic," Mayor Rendell assigned a bodyguard to Karen Butler, a member of his administration overseeing the situation, and the media covered the strike. Her only remotely relevant evidence is the affidavit of a cab driver who claims that he felt that airport police retaliated against the cab drivers after the strike by issuing more citations. Plaintiff's then leaps to the conclusion that in the following months the City must have quietly decided not to provide telephone service to the taxi holding lot in retaliation for the cab drivers' First Amendment activity.

The Court is rather at a loss over the probative value of some of plaintiff's so-called evidence, such as the fact that Ms. Butler was assigned a bodyguard by Mayor Rendell. And the baldfaced "feelings" of a cab driver do not constitute evidence of the City's allegedly retaliatory motive for not installing telephone service which had not been installed to date in any

event. While the Court recognizes that direct evidence of retaliation or discrimination is rare, and that plaintiff need not produce a smoking gun, nevertheless the so-called circumstantial evidence produced by plaintiff is grossly insufficient. No reasonable jury could find, from the evidence produced by plaintiff, that the cab drivers' strike was the reason why the City failed to install telephone service at the holding lot in the months following the strike. Plaintiff appears to rely on the timing of the noninstallation of the phones as circumstantial evidence of retaliation; but given that the phones had never been installed to date, plaintiff is hard-pressed to argue that continued noninstallation is suddenly evidence of retaliation. The Court cannot in good conscience draw such an inference.

After months of discovery and extended discovery, plaintiff has apparently been unable to uncover the purported discrimination and retaliation behind the noninstallation of emergency telephone service to the taxi holding lot at the Philadelphia airport. While the Court is not unsympathetic to plaintiff's case, the Court must find that plaintiff has not created any triable issues with respect to her § 1983 claims for constitutional violations. Indeed, the Court would go so far as to suggest that plaintiff has pursued the wrong defendants by attempting to turn a tort cause of action into a civil rights action. In view of the above, the Court will grant the City defendants' Motion for Summary Judgment, as plaintiff has failed

to produce any evidence of discrimination or retaliation on the part of the City defendants.

2. Claims against Parkway Defendants

In addition to her claims against the City defendants, plaintiff also brings state law negligence claims against the Parkway defendants. No diversity of citizenship exists between plaintiff and the Parkway defendants, as all parties are citizens of Pennsylvania. Thus the only basis for this Court's jurisdiction over plaintiff's state law claims against the Parkway defendants is 28 U.S.C. § 1367, the supplemental jurisdiction statute. As the Court will grant summary judgment in favor of the City defendants on the federal claims in this action, the Court in its discretion declines to exercise supplemental jurisdiction over the remaining state law claims against the Parkway defendants pursuant to 28 U.S.C. § 1367(c)(3).<sup>2</sup>

According to the Third Circuit, where the claim over which the district court has original jurisdiction is dismissed before trial, the district court must decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so. Borough of West Mifflin v.

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<sup>2</sup> Title 28 U.S.C. § 1367 states, in pertinent part, as follows: "The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367 (c)(3).

Lancaster, 45 F.3d 780, 788 (3d cir. 1995). This is because supplemental jurisdiction is "a doctrine of discretion, not of plaintiff's right." Id. (quoting United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966)). Its justification lies in considerations of judicial economy, convenience and fairness to litigants; thus if these are not present, a federal court should hesitate to exercise jurisdiction over state claims, even though bound to apply state law to them. Id. "Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law." Id. If the federal claims are dismissed before trial, the state claims should be dismissed without prejudice and left for resolution to state tribunals. Id. Indeed, even after the pretrial process has been completed and trial commenced, a federal court need not "tolerate a litigant's effort to impose upon it what is in effect only a state law case." Id.

In the instant case, the Court sees no special considerations of judicial economy, convenience, and fairness that militate in favor of adjudicating plaintiff's state law claims in federal court. Indeed, at the initial pretrial conference in this case, the parties informed the Court that litigation had originally been commenced in state court. Apparently that action was stayed or dismissed in favor of the federal action. If the state court action was merely stayed, then plaintiff can simply continue to litigate against the

Parkway defendants in that appropriate forum. In any event, § 1367(d) tolls the statute of limitations on plaintiff's state law claims, so plaintiff will suffer no prejudice in refiling her state law claims in state court. Accordingly, the Court will dismiss plaintiff's claims against the Parkway defendants without prejudice, and deny the Parkway defendants' Motion for Summary Judgment as moot.

**D. Conclusion**

In conclusion, the City defendants' Motion will be granted and plaintiff's remaining claims against the Parkway defendants will be dismissed without prejudice. The Parkway defendants' Motion will be denied as moot.

An appropriate Order follows.

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Clarence C. Newcomer, J.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CAROLYN W. LYONS,	:	CIVIL ACTION
as Executrix for the Estate of	:	
John F. Lyons,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.,	:	
Defendants	:	NO. 98-2662

**O R D E R**

AND NOW, this            day of June, 1999, it is hereby  
ORDERED as follows:

(1) The Motion for Summary Judgment of Defendants City of Philadelphia, Mary Rose Loney, Lynn McDevitt, Bohdan Korzeniowski, Lawrence Kelly, Mark Liciadello and John Doe City 1 through N ("City defendants' Motion") is hereby GRANTED. It is further ORDERED that JUDGMENT is hereby ENTERED in favor of the City defendants and against plaintiff on all of plaintiff's claims against the City defendants.

(2) Plaintiff's claims against defendants Parkway Corporation, Parkway Garage, Inc., Ernest Roy and Michael Bassett are hereby DISMISSED without prejudice.

(3) Defendants' Motion for Summary Judgment (Parkway defendants' Motion) is hereby DENIED as moot.

AND IT IS SO ORDERED.

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Clarence C. Newcomer, J.