



TESTIMONY ON BEHALF OF THE LIVERY ROUND TABLE
TO THE SENATE STANDING COMMITTEE ON INTERNET & TECHNOLOGY
OCTOBER 16, 2019

Good afternoon Chair Savino and distinguished members of the New York State Senate Standing Committee on Internet and Technology. I am Dr. Avik Kabessa, CEO of Carmel Car Service and founder of the Livery Round Table, which advocates on behalf of the “traditional” for-hire vehicle (“FHV”) sector, known as livery, largely operating in the outer boroughs and minority communities of New York City. I have prepared this testimony to detail our sector’s concern regarding the Dependent Worker Act (S.6538), as well as other legislation attempting to address the “Gig Economy” debate. This legislation appears to make no distinction between traditional livery and “high-volume” for hire transportation such as Uber and Lyft. My testimony will show how the traditional FHV sector has nothing to do with “Gig Economy” and likewise should not be captured by and subjected to the proposed legislation.

By way of background, the traditional FHV sector, livery, existed for forty (40) years prior to the arrival of the high-volume FHV sector (Uber, Lyft, and alike). While 5% of the traditional livery bases own the for-hire vehicles and employ the drivers (primarily located in Staten Island and at the Queens/Long Island border), the vast majority (95%) of the traditional livery vehicles are owned by drivers who are independent owner/operators affiliated with the livery base. Although an independent livery driver by statute must affiliate with one livery base, this affiliation has become substantively meaningless. Drivers decide when and if to perform a trip for a base.

Drivers decide which base they will accept a trip from. Thus drivers affiliated with one base receive dispatches from as many bases as they wish to maximize opportunity for fares in the conduct of their personal business; and independent drivers can affiliate and disaffiliate at-will from bases for the nominal fee of \$25 dollars.

On the other hand, while high-volume companies like Uber and Lyft are also “classified” within the FHV industry, their business model is nothing like the traditional livery sector. When combined with their high capitalization and significant market share, high-volume companies can exert overwhelming leverage to control a driver’s business activities. Just as examples, Uber offered monetary compensation to drivers for simply being available a minimum number of hours per week exclusively for Uber dispatch. Similarly, Uber offered large bonuses for drivers accepting over 90% of their dispatched trips from Uber. In contrast, livery bases have never, nor could they ever exert “employer”-type control over drivers as commonly understood using a generic analysis to determine a worker’s employee/independent contractor status. As written, this bill might nonetheless impose a number of new obligations upon traditional livery bases, which would continue the regulatory assault on this sector that has resulted in decimating and putting out of business so many livery bases.

Though this bill appears to be targeted towards large firms such as Uber and Lyft, traditional livery faces a significant existential risk in the bill’s adoption of a broad approach that imposes an entirely new business model on our fragile sector, which is already struggling to compete against these international behemoths. For much of the past 30 years, the number of livery and black car bases grew at an average of 5% from year to year, in an almost direct correlation commensurate to the growth of New York City’s residential population and the number of tourists visiting our city. Since the explosion of Uber, Lyft, and similar firms into the FHV market,

traditional livery has shrunk from 28,000 vehicles in 2011 to just 10,000 cars in 2018 (a 65% loss of business). It is not happenstance that our sector has seen diminution; rather, it is the coupling of an enormous set of rules and regulations imposed on traditional livery alongside the introduction of highly-capitalized competitors with a new, largely unregulated business model dispatching cars affiliated with traditional livery bases and poaching drivers with impossible incentives, resulting in the collapse and closure of traditional livery bases and the consolidation of the market in Uber and Lyft.

Recent local actions have begun addressing this disparity. New York City Council passed Local Law 149-2018, a major milestone which established a legal distinction between traditional livery and “high-volume for-hire services” such as Uber and Lyft that dispatch more than 10,000 trips in one day. The purpose of this distinction is the recognition that those entities are in an advantageous economic position – both against competing livery bases and over the drivers they dispatch to – and likewise should be required to provide certain benefits to drivers as compared to traditional livery bases to rectify this disparity. Some examples of local protections for drivers of high-volume services include minimum payment requirements and shifting the risk of loss to the dispatch services. **An appropriately tailored “gig economy” bill touching on the FHV industry should likewise be limited in application only to high-volume for-hire services.**

As a guidepost from the past, the traditional livery driver is also recognized as an independent entity when it comes to Workers Compensation coverage. Specifically the creation of the New York Independent Livery Driver Benefit Fund (“NYILDBF”)¹. This fund helped resolve longstanding issues in the industry (without restructuring our business model) regarding livery

¹ The NYILDBF was created pursuant to NY Executive Law Article 6-G, which took effect January 1, 2010.

drivers Workers' Compensation benefits, and when a driver is entitled to no-fault insurance benefits. **By crafting a workable solution that reflects our existing business model, the NYILDBF has proven a tremendous success for both drivers and bases.**

A broad, all-encompassing bill, such as the proposed language before us today, that likewise captures our sector, would not only repudiate the positive objectives of such a carefully tailored, sector-specific program like the NYILDBF, but would push the already-struggling livery sector over the brink and lead to the emergence of a FHV monopoly under Uber, Lyft, and their coequals – *the very firms this bill attempts to address in the first place*. Likewise, appropriately tailored “Gig Economy” legislation targeting high-volume FHV services such as Uber and Lyft should not apply to traditional FHV services such as livery.

I thank you for your time and consideration, and I look forward to answering any questions the panel may have.