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Via Electronic Mail

November 9, 2012

Rosemary Krimbel
Commissioner
Department of Business Affairs and Consumer Protection
Public Vehicle Operations Division
2350 W. Ogden Avenue, First Floor
Chicago, Illinois 60608

Re: Draft for Public Comment: Public Passenger Vehicle, Other than Taxicabs,
License Holder Rules and Regulations

Dear Commissioner Krimbel:

The Liberty Justice Center appreciates the opportunity to comment on the above-referenced draft rules and regulations, specifically Rules PV1.10 and PV6.01 therein, issued by your department on October 22, 2012. LJC is a nonprofit, nonpartisan public interest litigation center dedicated to enforcing rights protected by the U.S. and Illinois Constitutions. We pursue cases in state and federal court against governments and government officials that abuse or exceed their legal authority, primarily in the areas of individual rights, economic liberty and property rights.

Rule PV1.10 would do two things that are of particular concern to us: 1. it would prohibit public passenger vehicle ("PPV") licensees from using any device – mechanical or otherwise – that measures passenger fares based on distance and/or time traveled; and 2. it would deem a PPV that advertises or charges fares by measuring distance and/or time traveled an unlicensed taxicab. These provisions would effectively deprive PPV drivers of any reasonable means to calculate the fares they charge, including the use of even a clock, map or pocket calculator, in advance or otherwise. In other words, fares could not be based on the industry standards one would expect them to use and which they have always commonly used. The rule would essentially force drivers to *guess* at a trip's time and distance – which at best would cause them to err on the side of more time and greater distance to avoid

taking a loss and result in higher, less predictable, less transparent charges for consumers – if not make it wholly impossible for them to set fares.

Further, the measure serves only to favor entrenched special interests, namely the taxicab industry, at the expense of entrepreneurs, small businesses and the citizens of Chicago alike. As such, it serves no discernible public health, safety or welfare benefit. Further, the rule is anathema to your department's mission, which claims to "promote and ensure a fair and vibrant marketplace for businesses and consumers."¹ Therefore, we urge you to withdraw it.

PV1.10 kills jobs, stifles competition and is unconstitutional

Illinois has the highest unemployment rate in the Midwest and the 10th highest in the nation, while the City of Chicago's unemployment rate is well above the national average.² During this ongoing economic stagnation, it is critical that all levels of government refrain from imposing unnecessary rules and regulations that would stifle economic freedom and entrepreneurship.

Economic freedom is the right of an individual to compete fairly in the market of his choosing. On one level, this freedom is a valuable end in itself: people have a fundamental civil right to pursue their dreams and earn an honest living. Restricting economic freedom, as PV1.10 would do, also hurts our economy in tangible ways.

Economic freedom is also essential to economic growth and job creation. Economist Russell Sobel has studied the effect of economic liberty on entrepreneurship and has found that less economic freedom in a state reduces critical measures of entrepreneurship, such as venture capital investment per capita, the growth rate of sole proprietorships and business birth rates.³ Entrepreneurship is essential to a healthy economy: in fact, according to a recent study by the Illinois Policy Institute, entrepreneurship is the single greatest driver of net job growth in Illinois.⁴

¹ *City of Chicago :: Business Affairs and Consumer Protection – Mission*, http://www.cityofchicago.org/city/en/depts/bacp/auto_generated/bacp_mission.html.

² *See Unemployment Rate – Seasonally Adjusted*, http://www.google.com/publicdata/explore?ds=z1ebjgk2654c1_&ctype=l&strail=false&bcs=d&nse=lm=h&met_y=unemployment_rate&fdim_y=seasonality:S&scale_y=lin&ind_y=false&rdim=country&idim=country:US&idim=state:ST170000&ifdim=country&ind=false; *Chicago Unemployment Rate Drops to 9.4%*, World Business Chicago, Oct. 25, 2012, <http://www.worldbusinesschicago.com/news/chicago-unemployment-september-2012>.

³ Russell S. Sobel, *Economic Freedom, Entrepreneurship, and Economic Growth at the Subnational Level*, in *Economic Freedom of North America: 2008 Annual Report* 50 (Amela Karabegovi & Fred McMahon eds. 2008).

⁴ Ted Dabrowski & Scott Moody, *Championing the Startups* (2012), available at <http://illinoispolicy.org/news/article.asp?ArticleSource=5175>.

Moreover, even a small increase in economic freedom substantially lowers unemployment, especially among women and young people.⁵

PV1.10, however, would be a step backward for economic freedom and entrepreneurship in Chicago. For example, it would crush the business model pioneered by Uber, the maker of a mobile phone application that connects customers with drivers of public passenger vehicles and taxis, which came to Chicago last year. Founded in San Francisco in 2011, the company now has a Chicago office that serves tens of thousands of customers. The proposed regulation would harm not only Uber and its customers but also the more than 1,000 taxi and PPV drivers who are affiliated with Uber in the City of Chicago. Proposed Rule PV1.10 would literally destroy this business, and all that goes along with it, from the jobs it creates, to the consumer choice it provides, to the taxable revenue it generates. And it does so for no good reason.

Proposed Rule PV1.10 is not rationally related to the public's health, safety or welfare

The Illinois Constitution requires that any regulation that limits an individual's right to engage in the lawful business or occupation of his or her choosing "have a definite and reasonable relationship" to protecting the public health, safety or welfare.⁶ Under the Illinois Constitution, the City cannot invoke its police power to arbitrarily interfere with private business, and it cannot impose "unnecessary or unreasonable restrictions upon lawful occupations."⁷ Furthermore, the City can never invoke its police power "to serve a purely private purpose."⁸

For more than a century, the Illinois Supreme Court has applied these principles to strike down laws that do not serve the public's health, safety or welfare but instead protect private special-interest groups from competition. For example, the Court has struck down licensing requirements for alarm-system contractors, funeral directors and plumbers that bore no relationship to the public health, safety or welfare.⁹ In another case, the Court struck down a Chicago ordinance that prohibited stores that sold dry goods, jewelry and drugs from also selling grocery items, which served only

⁵ See Stephen T. Easton & Michael A. Walker, *Income, Growth, and Economic Freedom*, Am. Econ. Rev., May 1997, at 328-32.

⁶ See *Church v. State*, 164 Ill.2d 153, 164 (1995).

⁷ *Figura v. Cummins*, 4 Ill.2d 44, 49 (1954).

⁸ *Koos v. Saunders*, 349 Ill. 442, 449 (1932).

⁹ See *Church*, 164 Ill.2d 153 (alarm-system contractors); *Gholson v. Engle*, 9 Ill.2d 454 (1956) (funeral directors); *People v. Masters*, 49 Ill.2d 224, 227 (1971) (plumbers); *Schroeder v. Binks*, 415 Ill. 192 (1953) (same); *People v. Brown*, 407 Ill. 565 (1950) (same).

to protect traditional retailers from department-store competition.¹⁰ Federal courts likewise have struck down protectionist laws that do not serve the public's health, safety or welfare under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution. For example, the U.S. Court of Appeals for the Sixth Circuit struck down a law that only allowed licensed funeral directors to sell caskets because it was a "naked attempt to raise a fortress protecting the monopoly rents that funeral directors extract from consumers."¹¹

Proposed Rule PV1.10's nonsensical ban on "devices" that measure time and distance has no conceivable relationship to protecting the public's health, safety or welfare. On the contrary, it would *harm* consumers by reducing competition, raising prices, and destroying a service that they value. It would also harm PPV licensees by depriving them of valuable sources of income – such as fares earned through mobile applications such as Uber – which will make it harder for them to earn a living, and it would destroy a major part of Uber's business in Chicago. And for all of this harm, there would be no offsetting benefit, either to the parties directly affected or to the general public.

The only purpose Rule PV1.10 appears to serve is the protection of traditional taxicab companies from competition from livery vehicles. Indeed, certain large taxicab companies have made no secret of their desire to put an end to Uber's business in particular, as demonstrated by their lawsuit recently filed in the United States District Court for the Northern District of Illinois.¹² The taxicab lobby has also attempted – but mostly failed – to put Uber out of business in other parts of the country, such as Washington D.C., where it unsuccessfully lobbied to force Uber's black cars to charge five times the rates that taxis charge.¹³ Protection of established industry players in this way is precisely the purpose that a regulation on businesses and occupations *cannot* serve under the Illinois and U.S. Constitutions. Therefore, in our view, Proposed Rule PV1.10 would be unconstitutional and is the kind of measure we would seek to challenge in court.

¹⁰ *City of Chicago v. Netcher*, 183 Ill. 104, 108 (1899) (striking ordinance that prohibited stores that sell dry goods, jewelry, and drugs from also selling grocery items).

¹¹ *Craigmiles v. Giles*, 312 F.3d 220, 229 (6th Cir. 2002); *see also St. Joseph Abbey v. Castille*, 835 F. Supp.2d 139 (E.D. La. 2011) (striking a similar rule on the same grounds), *certified to state court*, __ F.3d __, 2012 WL 5207465 (5th Cir. Oct. 23, 2012); *Clayton v. Steinagel*, __ F. Supp.2d __, 2012 WL 3242255 (C.D. Utah 2012) (striking law subjecting hairbraiders to cosmetology licensing requirements because it did not advance public health and safety); *Cornwell v. Hamilton*, 80 F.Supp.2d 1101 (S.D. Cal. 2001) (same).

¹² *Yellow Group LLC v. Uber Technologies, Inc.*, No. 1:12-cv-07967 (N.D. Ill. filed Oct. 4, 2012).

¹³ *See Mike DeBonis, Final Vote on D.C. Taxi Overhaul Set for Today*, Washington Post, July 10, 2012, http://www.washingtonpost.com/blogs/mike-debonis/post/final-vote-on-dc-taxi-overhaul-set-for-today/2012/07/10/gJQAjQQUaW_blog.html.

PV6.01's Ban on advertising raises significant First Amendment Concerns

Finally, we are also concerned about proposed Rule PV6.01, which bans PPV licensees, except for charters and sightseeing licensees, from displaying advertising in or on their vehicles. This ban not only targets one type of licensee to the exclusion of others, it bans protected speech, including the advertising of the licensees' own businesses, for no compelling reason. Accordingly, we believe this implicates significant First Amendment rights and urge you to withdraw this proposed regulation as well.

Proposed Rule PV1.10 exceeds the Department commissioner's authority under the Chicago Municipal Code

We also believe that proposed Rules PV1.10 and PV6.01 would be an unlawful exercise of the Department commissioner's authority under the Chicago Municipal Code. The Code authorizes the commissioner "to adopt rules and regulations for the proper administration and enforcement" of its provisions regulating PPVs in Chapter 9-114. However, a rule prohibiting PPVs from using devices to measure time and/or distance to determine fares would not pertain to administration or enforcement of the Code – it would effectively *amend* the Code to prohibit things that the City Council chose not to prohibit when it enacted Chapter 9-114. Likewise, Rule PV6.01, notwithstanding its unconstitutionality, is not authorized by the ordinance. Because imposing such rules exceeds the commissioner's authority under the Code, it appears they may be challenged on this ground as well.¹⁴

Conclusion

Proposed Rules PV1.10 and PV6.01 would do nothing to protect public health and safety. Instead, they would stifle competition, discourage innovation and harm PPV drivers and consumers. Consistent with the Department's mission, the right of PPV drivers to earn a living free from arbitrary and anti-competitive restrictions, and the right of consumers to choose the services they prefer, we urge you to withdraw these provisions.

¹⁴ See *McArdle v. Rodriguez*, 277 Ill.App.3d 365, 374-76 (1st Dist. 1995) (striking Department of Personnel commissioner's "arbitrary" rules for promotion because the Department's interpretation of the Chicago Municipal Code could "provide no power independent of that given by the ordinance").

Very truly yours,

A handwritten signature in black ink, appearing to read 'Diane', with a large circular flourish at the beginning and a horizontal line extending to the right.

Diane Cohen
General Counsel
Jacob Huebert
Associate Counsel
Liberty Justice Center