

# Cabbies In Uphill Battle Against Regulators Over Uber Rules

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By: Mark J. Stempler

Law360 (May 2, 2018, 9:11 PM EDT) — The Second Circuit's finding that traditional taxicabs weren't unconstitutionally harmed by New York City rules governing ride-hailing services like Uber and Lyft may derail similar challenges in other cities from taxicabs seeking more hard-line rules for their new rivals, attorneys say.

In another setback for taxicabs claiming cities' laissez-faire approach to regulating ride-hailing apps is killing their business, a three-judge panel of the Second Circuit said Tuesday that New York City **properly justified** crafting different regulations for Uber Technologies Inc., Lyft Inc. and similar apps because the businesses were distinct enough from traditional medallion taxicabs operating in the Big Apple.

"The taxis are in an uphill battle. They've lost the fight, essentially, in my mind, because this is the same as the payphone moving on to the cellphone, newspapers moving up to online websites, classified ads moving up to Craigslist," said Abbey R. Stempler, assistant professor of business law and ethics at Indiana University's Kelley School of Business. "Industries change and change with innovation."

The ruling is a win for New York City, which joins Chicago, Milwaukee, Philadelphia and Boston in defeating lawsuits from traditional taxicab drivers and companies alleging local regulators went easy on newer entrants by crafting uneven rules that deprived medallion cabs of their equal protection and due process rights.

"State and local governments have a lot of authority to regulate as they see fit when it comes to matters like this; they're given broad discretion," Daniel H. Handman, a partner at Hirschfeld Kraemer LLP, told Law360. "The constitutional challenges have to be pinned on something very solid and very apparent. And here, they're not."

There are plenty of valid reasons why a state or local government would treat a ride-hailing company differently from a taxicab company, and “the courts seem to be falling into line almost 100 percent uniformly, even though they’re dealing with somewhat different regulations from various cities and states,” Handman said.

“It’s very hard for a private litigant to say to the government, ‘You have to regulate an industry this way. That’s the remedy I’m seeking, for you to regulate this industry differently than you’re doing now,’” he said.

Arthur Goldstein, chair of Davidoff Hutcher & Citron LLP’s New York City government relations practice group who has represented the Taxi Medallion Owner Driver Association in other matters, said he’s not surprised that courts have **sided with regulators**.

“Courts in general give regulatory bodies and legislatures a great deal of latitude, and so the decisions that have been occurring have not been a surprise to me at all,” he told Law360. “The taxi industry has been in such dire straits that they were essentially forced to try the court route. They’ve been in handcuffs, in a way, and the new entities were unregulated for a period of time and they felt the courts may understand that argument. But bottom line, it was a policy choice.”

Before the Second Circuit’s ruling backing New York City’s regulations, the Seventh Circuit set the bar in 2016 by **affirming Chicago’s and Milwaukee’s regulations** and concluding that traditional cab companies were clearly different from technology-backed newcomers like Uber and Lyft. Other district courts have similarly upheld the constitutionality of ride-hailing regulations in **Philadelphia, Boston** and elsewhere.

“Over time, Uber and Lyft, as recognized transportation network companies, have created a significant and standalone brand that separates themselves from the taxi industry to the point that states are more inclined now to protect that status by recognizing that TNCs provide a distinct service outside of the traditional taxicab market,” said Bill Taylor, a partner at Hanson Bridgett LLP.

The distinctions the courts have drawn between traditional taxicabs and ride-hailing services have doomed the taxicabs’ equal protection arguments because they can’t establish they’re similarly situated enough to be subjected to the same regulations in any given city, attorneys say.

“On the one hand, the taxis and the Ubers and Lyfts of the world provide essentially the same service: They’re providing for-hire transportation for people who need a ride to get from point A to point B for a fee,” said **Mark Stempler** of **Becker & Poliakoff PA**, who has represented taxicab companies in other Uber-related litigation in Broward County, Florida. “But what the courts have done is given deference to the government, [and] I think they’ve drawn distinctions.”

For example, the courts have homed in on the fact that Uber riders sign up for the Uber app, establishing a contractual relationship with Uber, which also has a contractual relationship with its driver — which doesn't happen with medallion taxicabs. The courts have also focused on the different ways for hailing a ride. Medallion cabs have the exclusive right to pick up hails directly from the street, while Uber, Lyft and the like can only pick up rides arranged through their apps.

“There's also a practical side to it that the Ubers and Lyfts have introduced a new method to hail rides. It seems like the courts don't want to get in the way of the advancement of this technology and maybe they worry about being seen as protectionist of an industry that has been around for some time,” Stemler said.

Ultimately, the Second Circuit's ruling signals to others who are similarly seeking to challenge regulations on the basis of equal protection that “it's going to be difficult to convince the court that these for-hire transportation providers must be treated in the exact same way” as taxicabs, Stemler explained.

Indiana University's Stemler also said the outlook is bleak for similar taxicab challenges against regulators.

“As long as the statutes are written that one can hail from the street and one can't, they will continue to be viewed as not similarly situated. And even if they were, as long as the city or state or federal government even can provide a rational basis for treating them different, the taxis are going to lose,” she said. “The standard is really difficult.”

Given that taxicabs are already feeling the pinch and their medallions might not be worth as much as they once were, attorneys say there's enough growing political pressure to eventually force lawmakers and regulators to rewrite the laws or place caps on the number of transportation network companies or ride-hailing services that can operate in a given market.

“Putting some caps on the supply side for the TNCs would help make the price a little bit better for taxicabs, so that would help the incumbents be able to earn a living,” Stemler said. “It's a constant tension [between] a firm that does it better and easier and an entrenched business that's been there since essentially the beginning of cars.”

Goldstein agreed that taxicab industry regulators, city councils and other lawmakers need to collaborate on policy changes going forward that even out the playing field. And the New York City Council is moving in that direction by considering a bill that would cap the number of ride-hail drivers in the city, and another that would levy a \$2,000 annual license fee and prohibit drivers for driving for multiple ride-hailing apps.

“What the courts are saying is it's [regulators'] choice, they did nothing

unconstitutional,” Goldstein said of recent court rulings. “They’re probably going to put the court cases aside, but I’m not sure it matters. The climate that we’re in now, the winds have now changed.”

-Editing by Brian Baresch and Breda Lund.