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## Uber and the Need for Particularized Regulation

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# UBER AND THE NEED FOR PARTICULARIZED REGULATION

Kayla Marie Heckman\*

*With technology constantly evolving, the law must evolve with it. Uber Technologies, Inc. (“Uber”) has transformed the transportation industry by making transportation readily available with the touch of a button on one’s mobile phone. Uber is now one of the leading companies in transportation and operates worldwide. While this expansion has been great for consumers, it has come with significant drawbacks and challenges. Uber threatens the taxi industry, the cities in which it operates, and even its own drivers. This Note will discuss how Uber’s rapid growth is disrupting transportation in major cities quicker than its impact can properly be regulated, how New York City is a trailblazer in Uber regulation, and how Miami, Florida is suffering from the effects of Uber and should follow New York City’s lead. This Note will also address the need for local and state legislatures to keep up with technological innovations and continuously create new laws to account for these new business models.*

I. INTRODUCTION .....	383
II. UBER’S HISTORY AND BACKGROUND IN MIAMI .....	385
III. UBER FINDS A LOOPHOLE TO REGULATION THROUGH THE COURT SYSTEM.....	387
IV. UBER’S BENEFITS.....	390
A. For Consumers.....	390
B. For Its Drivers .....	391
V. UBER’S NEGATIVE IMPACTS .....	391
A. Impact on the Taxi Industry and Its Drivers .....	392

B. <i>Impact on the Cities in Which Uber Operates</i> .....	392
C. <i>Impact on Its Own Drivers</i> .....	394
VI. NEW YORK CITY'S LEGISLATIVE REGULATIONS .....	397
A. <i>One-Year Freeze</i> .....	397
B. <i>Minimum Wage</i> .....	398
C. <i>Congestion Pricing Plan</i> .....	398
VII. NEW YORK CITY'S INFLUENCE OVER OTHER CITIES LIKE MIAMI.....	399
VIII. CONCLUSION.....	402

## I. INTRODUCTION

Uber started in San Francisco and at its initial public offering in May of 2019, had an initial market cap of \$75.5 billion.<sup>1</sup> Uber is now one of the leading companies in transportation and as of 2019 is operating in over 900 cities across 69 countries.<sup>2</sup> Uber's rapid growth has disrupted the transportation industry, particularly taxi services. Companies like Uber and Lyft, Inc. ("Lyft") make up 70.5% of the United States' business traveler market, leaving the rental car industry with 23% of the market, and the taxi industry with just 6% of the market, as of 2018.<sup>3</sup> Due to Uber's rapid growth, one of the biggest challenges facing legislatures is how they will regulate such a pervasive entity.

Uber and taxi companies have many similarities, yet they are regulated differently.<sup>4</sup> Uber and taxi companies provide customers with the same service, transporting them from one point to another. However, because Uber brands itself as a "technology platform" rather than a

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\* Juris Doctor Candidate, University of Miami School of Law, 2020; Bachelor of Science, Criminology and Criminal Justice, Florida State University, 2016. This Note is dedicated in memory of my Poppy. I would like to thank Professor Cheryl Zuckerman for her guidance and support, not only throughout the writing process of this Note, but also throughout my time at the University of Miami as a law student. I would also like to thank the Editorial Board of the University of Miami Business Law Review for their diligence into the review of this Note. Last but certainly not least, I have to thank my parents for their endless love and support, I would not be where I am today without them.

<sup>1</sup> Avery Hartmans & Nathan McAlone, *The Story of How Travis Kalanik Built Uber into the Most Feared and Valuable Startup in the World*, BUSINESS INSIDER (Aug. 1, 2016, 11:30 AM), <https://www.businessinsider.com/ubers-history>.

<sup>2</sup> See generally UBER, <https://investor.uber.com/home/default.aspx> (last visited Apr. 20, 2020).

<sup>3</sup> Michael Goldstein, *Uber And Lyft: The Cost And Benefits Of Disruption*, FORBES (May 9, 2018, 4:39pm), <https://www.forbes.com/sites/michaelgoldstein/2018/05/09/uber-and-lyft-the-cost-and-benefits-of-disruption/#191944cbdfcb>.

<sup>4</sup> Erin Mitchell, Comment, *Uber's Loophole in the Regulatory System*, 6 HOUS. L. REV. 75, 76 (2015).

transportation industry, it has been able to evade certain laws and regulations that taxi cabs are required to abide by.<sup>5</sup> Taxi companies are subject to strict regulations set by the city in which they operate; however, Uber is regulated under a separate set of rules.<sup>6</sup>

Taxi companies have brought class action lawsuits against their respective municipalities alleging a violation of their constitutional rights by creating separate rules for services like Uber.<sup>7</sup> However, every lawsuit has come out the same way, with each U.S. Circuit Court of Appeals ruling in favor of Uber, reasoning that it was rational to have a separate set of regulations for Uber given the company's unique business model.<sup>8</sup> These decisions have arguably led to the deregulation of Uber and its flooding of the market at uncontrollable rates, leading to multiple problems like increased congestion, decreases in job availability for drivers, and depletion of the taxi industry.<sup>9</sup> Cities are currently grappling with these problems and are working to adapt old transportation laws to take into account new technology platforms and their effect on the transportation industry.<sup>10</sup> While the taxi industry has been unsuccessful in obtaining stricter regulatory schemes for Uber through the court system, it may have a shot at achieving this goal through the legislative system.

Uber's biggest and most controversial market is New York City.<sup>11</sup> New York City is also the first city to impose stricter regulations on Uber.<sup>12</sup> This Note will focus on Uber's growth and development in Miami, and its avoidance of regulation through the court system. This Note will also discuss Uber's benefits and negative impacts and will then discuss New York City's response to the rapid growth of Uber and how Miami should follow New York City's lead in regulating the ride-sharing industry.

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 76-77.

<sup>7</sup> Linda Chiem, *Bleak Prospects For Cabbies' Challenges To Uber, Lyft Regs*, LAW360 (Aug. 23, 2018, 7:52 PM), <https://daytona.law.miami.edu:2192/articles/1076013?scroll=1>.

<sup>8</sup> *See id.* (stating that the Third, Second, Eleventh, and Ninth Circuits have all found that cities have not violated taxi companies' and taxi drivers' rights by setting different rules for companies like Uber and Lyft).

<sup>9</sup> *See id.*

<sup>10</sup> *See id.* ("Now that the municipalities are starting to realize that the ride-sharing industries don't just disrupt an industry, but they add tremendous congestion, they add pollution and they diminish the value of not only the medallions, but the ability to earn income by all the drivers, they're starting to really take regulation into account.")

<sup>11</sup> Hartmans & McAlone, *supra* note 1.

<sup>12</sup> Emma Fitzsimmons, *Why a Cap on Uber in New York Would be a Major Blow for the Ride-Hail Giant*, NEW YORK TIMES (Aug. 8, 2018), <https://www.nytimes.com/2018/08/08/nyregion/nyc-uber-cap-regulations.html>.

## II. UBER'S HISTORY AND BACKGROUND IN MIAMI

Uber has become one of the most popular alternatives to taking a taxi in big cities. Uber allows people to tap a button on a smartphone application and order a ride instead of having to stand outside and hail a taxi.<sup>13</sup> In 2009, two entrepreneurs, Travis Kalanick and Garrett Camp, launched Uber in San Francisco.<sup>14</sup> Since then, Uber has expanded significantly not only in the United States, but also internationally. As of December 2019, Uber is available in 69 countries and in over 900 cities worldwide.<sup>15</sup> However, Uber's growth and expansion did not come easily, and it took time before cities allowed it to operate legally.<sup>16</sup> This Note will focus on Uber's development and expansion in Miami, which is similar to how Uber started in other cities.

In 2014, Uber launched in the Miami market, despite being illegal under Miami's transportation laws at the time.<sup>17</sup> The previous Miami-Dade County transportation laws imposed multiple restrictions on private car services and were implemented to protect taxi services.<sup>18</sup> For example, one restriction included a one-hour minimum wait time rule which meant that one could not immediately jump into a private car, but it had to be ordered an hour prior.<sup>19</sup> This one-hour minimum wait rule was contrary to Uber's business model which offers immediate rides.<sup>20</sup> Another regulation on private car transportation was a set \$70 minimum price point requirement for any private car transport.<sup>21</sup> Lastly, there was also a limit on the number of town cars allowed to operate within the City.<sup>22</sup> Regulations like these were completely contradictory to Uber's business model and thus, made it illegal for Uber to operate in Miami-

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<sup>13</sup> See generally UBER, <https://www.uber.com/newsroom/history/> (last visited Jan. 8, 2018).

<sup>14</sup> *Id.*

<sup>15</sup> See generally UBER, <https://investor.uber.com/home/default.aspx> (last visited Apr. 20, 2020).

<sup>16</sup> Douglas Hanks, *Uber Fought the Law in Miami—and Only has to Pay Half of its \$4 Million in Fines*, MIAMI HERALD (Nov. 12, 2017, 4:57 PM), <https://www.miamiherald.com/news/local/community/miami-dade/article185897063.html>.

<sup>17</sup> *Id.*

<sup>18</sup> See Morgan Golombok, *Uber, an App-Based Car Service, Fights to Change Miami's Transportation Laws*, MIAMI NEW TIMES, (Sept. 16, 2013, 9:00 AM), <https://www.miaminewtimes.com/arts/uber-an-app-based-car-service-fights-to-change-miamis-transportation-laws-6517408>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

Dade County.<sup>23</sup> However, after months of trying to get the County to change its taxi laws without success, Uber decided to follow Lyft's lead and ignore the regulations and launch its business model in Miami.<sup>24</sup> Uber decided that promoting its business model was worth the fines, and hoped that it would become legal soon.<sup>25</sup>

By 2016, Uber was already thriving in Miami with more than 10,000 drivers operating in Miami-Dade County, despite its illegality.<sup>26</sup> In 2016, the County Commission voted to officially legalize the operations of Uber and Lyft within the County.<sup>27</sup> Uber and Lyft agreed to pay the County \$4 million worth of fines issued against their drivers since their illegal operations began in 2014.<sup>28</sup> While Uber's business model was now legal, it did not come without backlash.<sup>29</sup> Specifically, taxi drivers claimed that Uber had taken all of their business.<sup>30</sup> Taxi drivers complained of unfair competition due to the fact that taxis "must accept cash, charge regulated fares, and are part of a system that restricts the number of vehicles allowed to operate," while Uber drivers were not subject to the same restrictions.<sup>31</sup> Taxi drivers also claimed that the legalization of Uber unfairly deflated the value of taxi permits, known as medallions, that are treated as property under local law.<sup>32</sup> All of these concerns prompted the taxi drivers to file a class action law suit against Miami-Dade County.<sup>33</sup> Miami is not the only city that has dealt with taxi company class action law suits, however, this Note will only discuss in depth the U.S. Eleventh Circuit Court of Appeals' holding and reasoning as the other cities with similar lawsuits have all ruled the same way.<sup>34</sup>

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<sup>23</sup> *Id.*

<sup>24</sup> Tim Elfrink, *UberX Will Launch in Miami Today, Defying Miami-Dade's Taxi Laws*, MIAMI NEW TIMES, (June 4, 2014, 8:06 AM), <https://www.miaminewtimes.com/news/uberx-will-launch-in-miami-today-defying-miami-dades-taxi-laws-6533024>.

<sup>25</sup> *Id.*

<sup>26</sup> Douglas Hanks, *Uber and Lyft Are Now Legal in Miami-Dade, and Taxi Owners Vow to Fight Back*, MIAMI HERALD (May 3, 2016, 7:38 PM), <https://www.miamiherald.com/news/local/community/miami-dade/article75436467.html>.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See *Minneapolis Taxi Owners Coal., Inc. v. City of Minneapolis*, 572 F.3d 502 (8th Cir. 2009); *Ill. Transp. Trade Ass'n v. City of Chicago*, 839 F.3d 594 (7th Cir. 2016); Chiem, *supra* note 7 (stating that the Second, Third, Eleventh, and Ninth Circuits have all found that cities and municipalities have not violated taxicab companies' and drivers' rights under the takings clause or the due process or equal protection clause).

### III. UBER FINDS A LOOPHOLE TO REGULATION THROUGH THE COURT SYSTEM

With Miami-Dade County's 2016 Ordinance (the "Ordinance") authorizing Uber to operate legally within the County, came widespread competitive struggles with the taxi industry and a class action lawsuit.<sup>35</sup> Taxi companies filed suit against Miami-Dade County, claiming that the County violated the Takings Clause and the Equal Protection Clause of the United States Constitution as a result of passing the Ordinance.<sup>36</sup> The taxi companies argued that because the Ordinance diminished the value of the medallions that taxi drivers were required to purchase in order to operate, that this constituted a "taking" of the taxi drivers' property without just compensation.<sup>37</sup> Additionally, the taxi companies alleged that because the Ordinance subjected Medallion Holders to stricter regulations than the ride-hailing services like Uber, that this was discriminatory and in violation of the Equal Protection Clause.<sup>38</sup>

Miami-Dade County has extensively regulated the taxi market through the Miami-Dade County Code of Ordinances ("the Code").<sup>39</sup> This Code imposed many restrictions on the taxi industry including: licensing requirements, limiting the overall number of licenses, restricting the licenses' alienability, capping fares and rates, requiring insurance, setting vehicle standards, and setting penalties for those who violated the Code.<sup>40</sup> In 1998, the County adopted Ordinance No. 98-105, establishing the "medallion system" which renamed taxi licenses and established them as "intangible property."<sup>41</sup> This new ordinance imposed restrictions on the medallions and conditioned its use and alienability.<sup>42</sup> The result of the new ordinance was an increase in value of the medallions because the medallions were now more exclusive due to the County's limitation on the number of medallions able to operate in the County.<sup>43</sup> These medallions were seen as an investment and property interest.<sup>44</sup> In fact, in

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<sup>35</sup> See *Checker Cab Operators, Inc. v. Miami-Dade Cty.*, 899 F.3d 908, 912 (11th Cir. 2018).

<sup>36</sup> Nathan Hale, *11th Circ. Pans Miami Taxi Cos.' Challenge to Uber, Lyft Law*, LAW360 (Aug. 7, 2018, 8:47 PM), <https://daytona.law.miami.edu:2192/articles/1070778/11th-circ-pans-miamitaxi-cos-challenge-to-uber-lyft-law>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Checker Cab Operators, Inc.*, 899 F.3d at 912.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 912-13.

<sup>43</sup> *Id.* at 913.

<sup>44</sup> *Id.* at 912-13.

2012, a single medallion was worth more than \$400,000, and in 2014, a medallion traded for about \$340,000.<sup>45</sup>

In 2016, when the County enacted the Ordinance, it authorized Transportation Network Entities (“TNEs”), such as Uber, to operate within the County legally.<sup>46</sup> However, the TNE drivers did not have to acquire a medallion in order to operate and instead only needed a TNE license.<sup>47</sup> Because the TNEs did not have to acquire an expensive medallion, they were able to flood the market at no cost and in return substantially diluted the medallions’ value which prompted taxi companies to file suit.<sup>48</sup>

In addressing the taxi companies’ takings claim, the Eleventh Circuit found that the Code did not give the taxi companies the right to enjoin competition and that therefore there was no unconstitutional taking.<sup>49</sup> The Eleventh Circuit reasoned that “the medallions conveyed only a property interest in providing taxicab services in Miami-Dade County—not in barring competitors.”<sup>50</sup> The Eleventh Circuit emphasized that while the Code did designate the medallions as “intangible property,” that property rights do not include a right to be free from competition.<sup>51</sup> Further, the Code merely permitted the Medallion Holders to “possess, use, and dispose” of their medallions, which is interpreted as the right to merely operate in the for-hire transportation market, but that they are subject to regulation imposed by the County.<sup>52</sup> The Medallion Holders have a right to exclude others in respect to their own *personal* medallions, but the right to exclude does not extend to excluding competition as a whole.<sup>53</sup> The Eleventh Circuit noted that there is no case precedent that supports the Medallion Holders’ theory of exclusivity and that, in fact, other circuits have held that taxicab Medallion Holders do not have a property right to exclude competition.<sup>54</sup>

The taxi companies’ second argument was that the Ordinance violated the Equal Protection Clause by regulating the taxicab companies more stringently than the TNEs.<sup>55</sup> Specifically, the taxi companies pointed to

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<sup>45</sup> *Id.* at 913.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 917.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 918.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 919.

<sup>54</sup> *Id.* at 920 (citing to *Minneapolis Taxi Owners Coal., Inc. v. City of Minneapolis*, 572 F.3d 502 (8th Cir. 2009); *Ill. Transp. Trade Ass'n v. City of Chicago*, 839 F.3d 594 (7th Cir. 2016)).

<sup>55</sup> *Checker Cab Operators, Inc.*, 899 F.3d at 921.



differences in insurance requirements, vehicle inspections, and fare changes, and claimed that these differences have disadvantaged taxicabs.<sup>56</sup> The Eleventh Circuit analyzed the Equal Protection Clause claim under rational basis review due to the lack of discrimination on the basis of a suspect class.<sup>57</sup> Under rational basis review, the challenged law must be rationally related to the achievement of some legitimate government purpose.<sup>58</sup> This is a low standard and is “easily met.”<sup>59</sup> The Eleventh Circuit held that the Medallion Holders’ Equal Protection Clause claim failed for two reasons: (1) the Medallion Holders overstated the differences in the regulatory treatment given to taxicabs and TNEs and (2) the regulatory differences that were substantial, were rationally related to the government’s interests.<sup>60</sup> For example, the Eleventh Circuit found that the regulations imposed on the taxis for insurance and background checks were nearly the same as the TNEs.<sup>61</sup> While the court did note that some of the County’s regulations of taxicabs were, in fact, more burdensome, it found that each one was rationally related to a legitimate government interest and therefore satisfied rational basis review.<sup>62</sup> For example, the differences in the kind of contracts the companies had to have with their drivers were justified and rational due to the differences in the respective business relationships.<sup>63</sup>

The Eleventh Circuit ultimately held that because Uber’s business model was different from traditional taxi cabs that Uber was therefore not subject to the same regulations as taxi companies.<sup>64</sup> Because Uber is not regulated in the same way as taxi companies, Uber increasingly operates in a gray area, outside traditional regulations. With Uber’s growing market there are multiple issues that need to be addressed. The Eleventh

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 922.

<sup>61</sup> *Id.* at 922-23 (explaining that although TNEs were allowed to obtain independent background checks while Medallion Holders were required to obtain background checks through “Department inspections” that the treatment of taxicabs and TNEs with respect to background checks were nearly identical).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 923-24 (explaining that the different treatment in vehicle appearance requirements, which more strictly required taxicabs to be clean, was rationally related because taxicabs are associated with the County and that to maintain a positive image of the County, it was rational for them to impose these regulations on taxicabs and that the County’s regulation of taxicab fares more stringently by establishing price ceilings for taxis while TNEs are able to set their own rates based on distance and time is rational due to the significant difference in business models).

<sup>64</sup> *Id.* at 924.

Circuit's decision, and those of other circuits that have ruled similarly,<sup>65</sup> suggest that Uber is exempt from traditional regulations on transportation, and it could be argued that Uber has essentially found a loophole in the transportation regulatory system.<sup>66</sup> Without new laws to adjust to this new technological advance and increase in ride-sharing, companies like Uber are potentially capable of forever evading the law. However, these cases also present a double-edged sword. It can be argued that these cases will also potentially give *cities* a loophole to regulate Uber more strictly than taxi companies, so long as the state laws are rationally related to the state's interest.

#### IV. UBER'S BENEFITS

##### A. *For Consumers*

Uber is appealing to consumers for many reasons. Chief among those reasons is the price difference between taking an Uber versus a taxi with Uber usually being less expensive.<sup>67</sup> This lower cost structure makes transportation available to more people.<sup>68</sup> Uber can also be used as an alternative to owning a car and can save consumers money.<sup>69</sup> Many travelers can use Uber to avoid parking costs.<sup>70</sup> Additionally, ordering an Uber saves time because one does not have to wait outside and hail a taxi down.<sup>71</sup> Uber has also reduced the rate of drunk driving.<sup>72</sup> A 2016 study

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<sup>65</sup> See *Minneapolis Taxi Owners Coal., Inc. v. City of Minneapolis*, 572 F.3d 502 (8th Cir. 2009); *Ill. Transp. Trade Ass'n v. City of Chicago*, 839 F.3d 594 (7th Cir. 2016); Chiem, *supra* note 7 (the Second, Third, and Ninth Circuits).

<sup>66</sup> See generally Mitchell, *supra* note 4.

<sup>67</sup> See Goldstein, *supra* note 3; see also Economic Development Research Group, Inc., *Uber's Economic Impacts in Florida*, UBER NEWSROOM, <https://ubernewsroomapi.10upcdn.com/wp-content/uploads/2018/07/Florida-Uber-Report-.pdf> (last visited Apr. 20, 2020) (stating that over half of Uber riders in Florida save money by using the service).

<sup>68</sup> See Goldstein, *supra* note 3.

<sup>69</sup> See Economic Development Research Group, Inc., *supra* note 67 ("Uber saves 8.3% of its riders costs associated with car ownership, as they report it enables them to eliminate the need for a second car and in some cases even a first car.").

<sup>70</sup> *Id.* ("Uber enables riders to save \$318 million annually in avoided parking costs.").

<sup>71</sup> See Javi Correoso, *Uber's Economic Impact in Florida*, UBER NEWSROOM (July 26, 2018), <https://www.uber.com/newsroom/florida-economic-impact/>.

<sup>72</sup> See Goldstein, *supra* note 3.

found that in the three years following Uber's entry into 150 cities and counties, the rate of DUI's and traffic fatalities fell.<sup>73</sup> These benefits help explain Uber's popularity among consumers.

### B. *For Its Drivers*

Uber also has many benefits for its drivers, particularly its flexibility.<sup>74</sup> Uber drivers have the ability to create their own schedule.<sup>75</sup> Drivers are free to work as much or as little as they like.<sup>76</sup> This allows Uber drivers to either use Uber for full-time work or to use Uber as a supplement to their existing income.<sup>77</sup> Another benefit for Uber drivers is the ability to interact with riders.<sup>78</sup> Uber has also increased job opportunities, making it easy for those who are unemployed to find a job quickly.<sup>79</sup> Because of the easy access to employment, Uber is able to reach workers who have a desire to work under flexible conditions.<sup>80</sup> While it is obvious that Uber has tremendous benefits, there are some significant drawbacks.

## V. UBER'S NEGATIVE IMPACTS

Uber's rising market share and increasing popularity has caused some negative impacts not only to the taxi industry, but also to Uber's own drivers, the cities in which it operates, and to its consumers.

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<sup>73</sup> *Id.*

<sup>74</sup> See Economic Development Research Group, Inc., *supra* note 67.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* ("This flexibility enables some drivers to drive only a few hours per week to supplement other sources of income, while others rely on Uber as their main source of income."); see also *Uber in the Economy*, UBER NEWSROOM (July 28, 2018), <https://www.uber.com/newsroom/uber-in-the-economy/>.

<sup>77</sup> See Economic Development Research Group, Inc., *supra* note 67 ("66% of drivers now make more than they did before partnering with Uber.").

<sup>78</sup> See Correoso, *supra* note 71.

<sup>79</sup> *Uber in the Economy*, *supra* note 76 ("[N]early a quarter of Uber driver partners were unemployed before they started driving with Uber.").

<sup>80</sup> See Economic Development Research Group, Inc., *supra* note 67 ("Some of those who were previously not working and not seeking employment could have been discouraged workers Uber brought back into the economy, or workers who were previously unable to participate in the economy due to family or child care obligations, a disability, or other reasons.").

### A. *Impact on the Taxi Industry and Its Drivers*

Because Uber drivers are not required to obtain a medallion to operate, there is no limit to the number of Uber drivers permitted to operate within a given area.<sup>81</sup> For example, in New York City, taxis are capped by city law at about 13,587 vehicles, while more than 60,000 Uber drivers are able to operate within the City with no cap.<sup>82</sup> Because of this disparity, Uber has essentially taken over the job market for taxi drivers, and this has led to financial turmoil for taxi drivers.<sup>83</sup> Uber's rising market has not only led to decreased job availability for taxi drivers, but has also rendered taxi drivers' medallions essentially worthless, considering the high prices drivers had to pay to acquire them.<sup>84</sup> In 2018, taxi medallions that were once sold for more than \$1 million, were valued as low as \$175,000.<sup>85</sup> Before competition from Uber, Lyft, and other ride-sharing companies, medallions were appealing to taxi drivers because they were seen as an investment, and many even hoped that the resale value of these medallions would fund their retirement.<sup>86</sup> This depreciation in value has caused so much financial strain on taxi drivers that within a span of five months, five taxi drivers committed suicide in 2018.<sup>87</sup> What was once seen as an asset, is now a liability as taxi drivers watch the value of their medallions decrease with the rise of technology and other transportation services like Uber.

### B. *Impact on the Cities in Which Uber Operates*

Not only does Uber have a negative impact on the taxi industry, but it also has a negative impact on the cities in which it operates. One of the most pressing issues is the added congestion that Uber has brought to

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<sup>81</sup> Emma Fitzsimmons, *A Taxi Driver Took His Own Life. His Family Blames Uber's Influence*, NEW YORK TIMES (May 1, 2018), <https://www.nytimes.com/2018/05/01/nyregion/a-taxi-driver-took-his-own-life-his-family-blames-ubers-influence.html>.

<sup>82</sup> *Id.*

<sup>83</sup> *See id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*; see also Nicole Goodkind, *NYC Taxi Drivers Are Killing Themselves, and Some Blame Uber and Lyft*, NEWSWEEK (Mar. 30, 2018, 9:29 AM), <https://www.newsweek.com/uber-lyft-taxi-drivers-suicide-new-york-city-866994> (describing the financial pressure that taxi drivers are experiencing with the rise of the tech industry and how this pressure is causing some drivers to take their own lives).

already highly populated cities.<sup>88</sup> One way that Uber differs from taxis is that Uber drivers are not subject to a cap on the number of drivers allowed to operate within a city.<sup>89</sup> Taxis can only operate with a medallion, which are limited by cities.<sup>90</sup> Uber and other for-hire transportation companies can operate without a medallion, leaving them without any cap as to how many can operate in a city.<sup>91</sup> This lack of regulation has led to significant congestion.<sup>92</sup> For example, the number of for-hire vehicles in New York City has surged to more than 100,000 vehicles from about 63,000 in 2015.<sup>93</sup> The average taxi speed in Manhattan is said to be the pace of a brisk walk.<sup>94</sup>

One reason for the increase in demand for Uber in cities like New York City is due to the deteriorating public transportation services.<sup>95</sup> With average subway speeds slower today than they were in the 1950s, and the subway's failure to operate on time, consumers have been forced to consider other transportation options like Uber.<sup>96</sup> With the deterioration of public transportation systems and the lack of funding to maintain these systems, consumers will only continue to look for other alternatives for transportation.<sup>97</sup> The added congestion also has negative impacts for consumers because it now makes their commute longer.<sup>98</sup> The congestion has also impacted the City economy by making it more difficult to get to work and by increasing delivery costs for restaurants.<sup>99</sup> Moreover, this increased congestion has led to environmental concerns.<sup>100</sup> With more cars on the road, there are now more emissions being added into the environment.<sup>101</sup> Until New York City improves the public transportation and subway system, Uber will continue to crowd the streets. If the subway system were improved and ran on time, perhaps consumers

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<sup>88</sup> Len Sherman, *Is Uber For Everything A Good Thing?*, FORBES (July 17, 2018, 10:21 PM), <https://www.forbes.com/sites/lensherman/2018/07/17/is-uber-for-everything-a-good-thing/>.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Fitzsimmons, *supra* note 12.

<sup>94</sup> Sherman, *supra* note 88.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Winnie Hu, *Your Uber Creates Congestion. Should You Pay a Fee to Ride?*, NEW YORK TIMES (Dec. 26, 2017), <https://www.nytimes.com/2017/12/26/nyregion/uber-car-congestion-pricing-nyc.html> (explaining that one New York City citizen only traveled two blocks in twenty minutes in a cab).

<sup>99</sup> *Id.*

<sup>100</sup> Sherman, *supra* note 88.

<sup>101</sup> *Id.*

would be more inclined to take the subway as opposed to an Uber, and this would reduce congestion on the streets.

### C. *Impact on Its Own Drivers*

Not only has Uber impacted taxi drivers, but it has also impacted its own drivers. One of the biggest controversies is whether Uber drivers are to be classified as independent contractors or employees.<sup>102</sup> The IRS defines an employee as “anyone who performs services for you is your employee if you can control what will be done and how it will be done.”<sup>103</sup> The IRS emphasizes that “[t]his is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.”<sup>104</sup> In comparison, the IRS defines one as an independent contractor when the “payer has the right to control or direct only the result of the work and not what will be done and how it will be done.”<sup>105</sup>

Uber classifies its drivers as independent contractors and not as employees.<sup>106</sup> Uber argues that it is a “technology company” and a “platform,” as opposed to a transportation company, and specifically defines its drivers in its contracts as “partners,” rather than employees.<sup>107</sup> Because of this distinction there are many employee benefits that Uber drivers do not receive, and this distinction allows Uber to circumvent certain state and federal laws.<sup>108</sup> For example, Uber avoids having to pay its drivers minimum wage, overtime, health care benefits, payroll taxes, gratuity, or workers’ compensation insurance.<sup>109</sup> Additionally, because Uber drivers are classified as independent contractors they do not get reimbursed for gas and maintenance, which can be expensive.<sup>110</sup> The employee versus independent contractor controversy has become a gray legal area and there have been multiple lawsuits brought by Uber drivers

<sup>102</sup> Omri Ben-Shahar, *Are Uber Drivers Employees? The Answer Will Shape the Sharing Economy*, FORBES (Nov. 15, 2017, 11:24 AM), <https://www.forbes.com/sites/omribenshahar/2017/11/15/are-uber-drivers-employees-the-answer-will-shape-the-sharing-economy/#55895c1b5e55>.

<sup>103</sup> IRS, *Employee (Common-Law Employee)*, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/employee-common-law-employee> (last updated Jan. 16, 2020).

<sup>104</sup> *Id.*

<sup>105</sup> IRS, *Independent Contractor Defined*, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-defined> (last updated Jan. 16, 2020).

<sup>106</sup> Mitchell, *supra* note 4, at 82.

<sup>107</sup> Ben-Shahar, *supra* note 102.

<sup>108</sup> Mitchell, *supra* note 4, at 82-83.

<sup>109</sup> See *id.* at 83-84; see also Yanelys Crespo, *Uber v. Regulation: “Ride-Sharing” Creates a Legal Gray Area*, 25 U. MIAMI BUS. L. REV. 79, 104 (2016).

<sup>110</sup> Mitchell, *supra* note 4, at 85.

claiming that they should be classified as employees in order to receive these employee benefits.<sup>111</sup> Drivers filing suit argue that Uber “misclassifies” its drivers as independent contractors to evade federal and state employment obligations and that this “misclassification” denies drivers their fundamental rights.<sup>112</sup> Notably, in April of 2019, the National Labor Relations Board issued an advisory memo concluding that Uber drivers are independent contractors due to the fact that the drivers set their hours, own their cars, and are free to work for Uber’s competitors.<sup>113</sup> Although the advisory memo will not affect the lawsuits claiming Uber drivers should be employees under federal and state wage laws, it may carry some influence.<sup>114</sup>

However, there are good arguments for both sides. On the one hand, Uber has a strong argument in defining its drivers as independent contractors because Uber does not control or direct its drivers.<sup>115</sup> One of Uber’s main appeals to drivers is its flexibility and the drivers’ ability to be their own bosses.<sup>116</sup> For example, drivers are free to work whenever and wherever they want.<sup>117</sup> In addition, drivers are paid by customers, not Uber.<sup>118</sup> Uber is merely a middleman that collects and distributes the payments after taking its own cut.<sup>119</sup> Lastly, while employers usually provide their employees with tools, Uber drivers use their own cars and pay for their own gas.<sup>120</sup>

On the other hand, there are some valid points to the fact that Uber drivers should be considered employees because Uber does exercise control over its drivers.<sup>121</sup> For example, the ride fares are set by Uber alone, as opposed to being negotiated with riders.<sup>122</sup> Drivers also must

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<sup>111</sup> Jonathan Ng, *Uber drivers file suit against ride-sharing company over wages, OT*, BOSTON HERALD (Jan. 3, 2019, 8:07 AM), <https://www.bostonherald.com/2019/01/02/mass-uber-drivers-file-suit-against-ride-sharing-company-over-wages-ot/>.

<sup>112</sup> *Id.*

<sup>113</sup> Daniel Wiessner, *Uber Drivers are Contractors, not Employees, U.S. Labor Agency Says*, REUTERS (May 14, 2019, 4:04 PM), <https://www.reuters.com/article/us-uber-contractors/uber-drivers-are-contractors-not-employees-us-labor-agency-says-idUSKCN1SK2FY>.

<sup>114</sup> *Id.*

<sup>115</sup> Ben-Shahar, *supra* note 102.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

follow Uber's code of performance.<sup>123</sup> Lastly, many drivers rely on Uber for full-time work.<sup>124</sup>

There are pros and cons to each classification. If Uber drivers were to be considered employees, they would then receive multiple employee benefits including minimum wage and health insurance.<sup>125</sup> However, the drivers would also potentially lose their freedom to be able to work whenever they want and would be subject to more stringent employee regulations.<sup>126</sup> Additionally, for Uber to be able to provide these required benefits, it would have to cut costs in the form of driver pay cuts and/or increase prices for consumers.<sup>127</sup> Moreover, if Uber drivers are classified as employees this further muddies the waters of the sharing platform as a whole because it will open the door to questions of all sharing platforms being classified as employees.<sup>128</sup> The ride-sharing industry as a whole, including Uber, has eliminated barriers to trade and increased competition, all while reducing prices for consumers.<sup>129</sup> If Uber drivers are considered employees it could risk depleting the sharing industry all together which would have a severe impact on consumers.<sup>130</sup>

Uber's ability to evade the minimum wage has become a pressing issue because more than half of Uber drivers in New York City use driving as their full-time job and are currently living in poverty.<sup>131</sup> Additionally, about half of all Uber drivers in New York City are supporting families and children on this income, an income that is so low that 40% of drivers are eligible for Medicaid and about 18% of drivers are eligible for food stamps.<sup>132</sup> Because of Uber drivers' need to earn a livable wage, cities are being urged to create stricter regulations on Uber. New York City has become the leader in addressing these concerns and has led the movement toward regulating Uber.

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<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* ("Like Uber, many sharing platforms create opportunities to coordinate peer-to-peer exchanges, enabling people to freelance everything—cars, homes, goods, and skills. If Uber is a transportation company that employs its drivers, is Airbnb a hotel chain? Is TaskRabbit (an app matching freelance labor with local demand) a cleaning and repair company? Is Instacart (a grocery delivery platform) a shipping company employing errand runners? Would these services survive a shift to employment status?").

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> Alexia Fernandez Campbell, *New York City cracks down on Uber and other ride-hailing apps*, VOX (Aug. 9, 2018, 9:29 AM), <https://www.vox.com/2018/8/8/17664424/new-york-uber-taxis-driver-law>.

<sup>132</sup> *Id.*



## VI. NEW YORK CITY'S LEGISLATIVE REGULATIONS

A. *One-Year Freeze*

Addressing the concern of increased congestion and unfair competition, New York City is the first city to implement a one-year freeze on the number of ride-sharing licenses issued.<sup>133</sup> The one-year freeze has recently been extended to last through August of 2020.<sup>134</sup> This freeze prevents any new ride-sharing drivers from joining the market.<sup>135</sup> During the freeze, the City will conduct a study on the ride-sharing industry to determine whether permanent regulations need to be enforced to cap the number of ride-share vehicles in the City.<sup>136</sup> The study will take into account multiple factors like “traffic congestion, the extent to which ride-share drivers contribute to such congestion, traffic safety, the amount of money earned by ride-share drivers, and the number of hours the drivers are working to provide their services.”<sup>137</sup> The study will also analyze the level of access to ride-sharing services throughout the City to determine whether there are communities that are underserved or would be negatively impacted by the license cap.<sup>138</sup> This new regulation also requires that the City annually check on the number of permitted ride-share drivers and adjust the license cap when needed.<sup>139</sup>

While many taxi and Uber drivers support the cap,<sup>140</sup> Uber unsurprisingly opposes the government-set cap on drivers.<sup>141</sup> Uber claims that a limit on drivers will have a negative impact on its customers.<sup>142</sup> Uber argues that a freeze will “decrease overall service, increase costs for passengers, and reduce service to neighborhoods that do not have easy access to mass transit.”<sup>143</sup> A cap on drivers may also lengthen the wait time for passengers.<sup>144</sup> Uber also argues that New York City needs its application now more than ever because the subway and bus systems are

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<sup>133</sup> Meneghello & Osipoff, *supra* note 135.

<sup>134</sup> Jonathan Stempel, *Judge Dismisses Uber Lawsuit Opposing New York City Vehicle License Caps*, REUTERS (Nov. 1, 2019, 4:40 PM), <https://www.reuters.com/article/us-uber-new-york-idUSKBN1XB51W>.

<sup>135</sup> Meneghello & Osipoff, *supra* note 135.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *See* Fitzsimmons, *supra* note 12.

<sup>141</sup> Goldman, *supra* note 133.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> Fitzsimmons, *supra* note 12.

in crisis.<sup>145</sup> Despite these arguments, in May of 2019, a New York state judge dismissed Uber's lawsuit challenging the cap.<sup>146</sup>

### B. *Minimum Wage*

New York City is also the first city to establish a minimum pay rate for drivers who drive for app-based ride-hailing companies like Uber.<sup>147</sup> The minimum pay rate comes out to \$17.22 per hour, a rate that is estimated to increase driver earnings by about 22%.<sup>148</sup> The minimum pay rate will help ensure that drivers are able to make a livable wage and will also cover convenience costs.<sup>149</sup> The wage takes into account the driver's expenses, such as gas and maintenance,<sup>150</sup> and the driver's total working time, which includes the wait time and travel time to pick up passengers.<sup>151</sup> Uber has stated that it supports any efforts to ensure that full-time drivers in New York City are able to earn a livable wage, however Uber also believes that the implementation of a minimum wage will only lead to increased fares for riders and will fail to address the issue of congestion.<sup>152</sup>

### C. *Congestion Pricing Plan*

To address congestion and the City's deteriorating subway system, New York City legislators are considering implementing a "congestion pricing plan," which would charge drivers a fee to enter the most congested parts of the City during peak commuting hours.<sup>153</sup> Congestion pricing not only increases revenue, but it also discourages people from driving into the most congested parts of a city during the busiest times of the day, which in turn would decrease congestion.<sup>154</sup> This fee would then

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<sup>145</sup> *See id.*

<sup>146</sup> Stempel, *supra* note 139.

<sup>147</sup> Linda Chiem, *NYC Approves Base Pay Rules for Uber, Lyft Drivers*, LAW360 (Dec. 4, 2018, 3:21 PM), <https://daytona.law.miami.edu:2192/articles/1107814/nyc-approves-base-pay-rulesfor-uber-lyft-drivers>.

<sup>148</sup> Meneghello & Osipoff, *supra* note 135.

<sup>149</sup> Chiem, *supra* note 152.

<sup>150</sup> Meneghello & Osipoff, *supra* note 135.

<sup>151</sup> Chiem, *supra* note 152.

<sup>152</sup> *Id.*

<sup>153</sup> Marc Santora, *Cuomo Calls Manhattan Traffic Plan an Idea 'Whose Time Has Come'*, NEW YORK TIMES (Aug. 13, 2017), <https://www.nytimes.com/2017/08/13/nyregion/cuomo-rethinks-opposition-to-tolls-to-ease-manhattan-traffic.html>.

<sup>154</sup> Charlotte Biblow, *State (Probably) Will Bring Congestion Pricing to New York City*, N.Y. L.J. (Nov. 30, 2018), <https://www.farrellfritz.com/wp-content/uploads/070111831-Farrell.pdf>.

be used to fund improvements to the City's mass transit system.<sup>155</sup> Congestion pricing systems have been implemented in other cities abroad and have been successful.<sup>156</sup> For example, in London, the congestion pricing system "has reduced congestion, improved air quality and public health, and created a long-term funding source for future transportation improvements."<sup>157</sup> Further, in Stockholm, the system reduced traffic and produced several environmental benefits to the city.<sup>158</sup> It is undisputed that New York City is in dire need of addressing the traffic congestion and is also in need of improving the subway system. Perhaps a congestion pricing plan could be the answer to both of these problems. New York City has not implemented a congestion pricing plan yet, but perhaps that is the next step in determining how to better regulate the ride-sharing industry.

## VII. NEW YORK CITY'S INFLUENCE OVER OTHER CITIES LIKE MIAMI

After New York City's implementation of the cap on the number of for-hire vehicles and a set minimum wage for drivers, other cities, including Miami, have proposed similar legislation.<sup>159</sup> Miami is also dealing with taxi drivers and their struggle to compete with companies like Uber.<sup>160</sup> In South Florida, the value of taxi medallions has significantly decreased from \$350,000 to \$35,000 since the arrival of ride-sharing companies like Uber.<sup>161</sup> Not only that, but Miami also has issues with traffic congestion.<sup>162</sup> Two Commissioners in Miami Beach

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<sup>155</sup> *Id.* ("Proponents suggest that this system would raise as much as \$1.5 billion per year that

could be used to make improvements to the city's transit system.").

<sup>156</sup> *Id.* (describing the impact congestion pricing systems has had in London, Stockholm, and Singapore).

<sup>157</sup> *Id.* ("Traffic congestion was reduced by 30 percent; average speed was increased by 30 percent; and bus ridership jumped by 38 percent.").

<sup>158</sup> *Id.* (stating that because of a "14 percent reduction in carbon dioxide, a seven percent cut in nitrogen oxide, and nine percent less particulate matter" that this led to a magnitude of health benefits to residents in the city).

<sup>159</sup> Brittany Shammass, *Miami Beach Commissioners Want to Cap Uber and Lyft Cars*, MIAMI NEW TIMES (Sept. 12, 2018, 9:30 AM), <https://www.miaminewtimes.com/news/miami-beach-commissioners-want-to-cap-uber-and-lyft-drivers-10721687>.

<sup>160</sup> *Id.*; see also *Checker Cab Operators, Inc. v. Miami-Dade Cty.*, 899 F.3d 908, 912 (11th Cir. 2018).

<sup>161</sup> Shammass, *supra* note 164.

<sup>162</sup> *Id.*

are pushing for a cap and increased wages for drivers, similar to that of New York City.<sup>163</sup>

It is not a question as to whether Uber needs to be regulated, it ultimately comes down to the question of *how* it is to be regulated and to what standards companies like Uber should be held to. Recognizing that Uber's business model is different in significant ways from the taxi industry, Uber should not be subject to the exact same regulations as the taxis, however it does still need to be regulated. This means that city and state legislators should make *new* laws to better regulate Uber so that Uber and taxi companies can both coexist, while both being subject to regulation.

In addressing any congestion or unfair competition issues, Miami should follow New York City's footsteps in issuing a cap on the number of Uber drivers allowed to operate within the City. This would level the playing field for taxi drivers and Uber drivers by eliminating any competitive advantage because they would both be capped at set numbers. A cap would not only reduce unfair competition, but it would also address any congestion concerns.

Similarly, Miami should impose a minimum wage on Uber drivers. This would address the Uber drivers' concerns over earning a livable wage without categorizing them as "employees." A minimum wage requirement would allow Uber drivers, who drive as their full-time job, to not only maintain their status as independent contractors, but will also allow them to earn a reasonable living. Because Uber drivers have the ultimate say in when and how long they work, it is not appropriate to classify them as employees. If Uber drivers were classified as employees it would end up having more of a negative impact on the drivers or on consumers, because Uber would need to cut costs or raise prices in order to provide for employee benefits.<sup>164</sup> For example, drivers might experience a significant reduction in the drivers' direct pay from rides, and consumers might experience an increase in ride fares, in order for Uber to be able to provide these extra benefits.<sup>165</sup> Implementing a minimum wage, on the other hand, solves the problem of drivers not making a reasonable living, without imposing added costs on consumers and without reducing the direct pay from the ride for drivers.

The next issue that needs to be addressed is whether Miami legislators can even impose these proposed regulations on Uber and if these regulations are constitutional. The Eleventh Circuit's holding in

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<sup>163</sup> *Id.*

<sup>164</sup> *See* Ben-Shahar, *supra* note 102.

<sup>165</sup> *Id.*

*Checker Cab* states that regulations on the transportation industry will be upheld so long as they are rationally related to a city's interest.<sup>166</sup> Here, the City's interest to decrease congestion and unfair competition, while also increasing the livelihood of Uber drivers, is likely to be found to be rationally related to the City's act of implementing a minimum wage and cap. Because rational basis review is "easily met,"<sup>167</sup> it seems like any regulation would pass this standard.

The City of Miami's need for regulation in the sharing industry is nothing new. Miami has successfully regulated Airbnb and should similarly be able to regulate Uber.<sup>168</sup> Like Uber, Airbnb brands itself as a "platform" rather than a business and experienced the same regulatory problems Uber faced when it first launched.<sup>169</sup> Airbnb is a short-term rental company that allows private homeowners to rent their homes to strangers on a short-term basis, similar to a hotel.<sup>170</sup> Airbnb experienced pushback from hotel companies alleging unfair competition because Airbnb hosts did not have to pay certain costs that hotel companies were required to.<sup>171</sup> For example, hotels were required to comply with certain health and safety laws and taxes that Airbnb's were not subject to.<sup>172</sup> Similar to Uber and the taxi industry, Airbnb's business model is different from the hotel industry and so Airbnb is not regulated under the same regulations as hotels.<sup>173</sup> The City of Miami and other cities have imposed regulations on Airbnb to better regulate the company and to address concerns over unfair competition.<sup>174</sup> Most of these local and state regulations have included restrictions on short-term rentals and the imposition of taxes.<sup>175</sup> Specifically, the City of Miami Beach "bans short-term rentals in all single-family homes and only allows short-term rentals in certain zoning districts."<sup>176</sup> The City of Miami's regulations on Airbnb have ultimately allowed hotels and Airbnb's to coexist due to the fact

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<sup>166</sup> See *Checker Cab Operators, Inc. v. Miami-Dade Cty.*, 899 F.3d 908, 922 (11th Cir. 2018).

<sup>167</sup> *Id.* at 921.

<sup>168</sup> See William P. Sklar & Jerry C. Edwards, *Florida Community Associations Versus Airbnb and Vrbo in Florida*, 91 FLA. B.J. 16, 18 (2017).

<sup>169</sup> Casey Rockwell et al., *Legal Ambiguity as a Competitive Advantage: Airbnb's Use of Technological Novelty to Avoid Liability*, 46 REAL EST. L.J. 352, 353–54 (2017).

<sup>170</sup> *Id.*

<sup>171</sup> Alamea Deedee Bitran, *The Uber Innovations that Lyfted Our Standards Out of Thin Air(Bnb), Because Now, "There's an App for That"*, 8 ELON L. REV. 503, 510–11 (2016).

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> See Sklar & Edwards, *supra* note 173.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* at 19.

that new regulations were made with Airbnb's specific business model in mind.<sup>177</sup> The City of Miami should adopt a similar framework to enact new regulations on the ride-sharing industry that will allow Uber and taxi companies to coexist.

Therefore, like the regulations on Airbnb, Uber needs to be subjected to regulations that are tailored specifically to its business model. With innovation comes the need for new laws. Cities like Miami and New York City will now have to take new innovative business models into account when passing new laws to regulate them.

### VIII. CONCLUSION

One of the main reasons why there is such a legal gray area in regulating ride-sharing companies like Uber is the fact that the court system continues to hold that because Uber's business model is different from taxis, that it is therefore constitutional for cities to regulate Uber differently from taxis.<sup>178</sup> This view allows Uber to bypass certain regulations that taxis cannot. Without regulation, Uber flooded the market and created new problems for its own drivers, taxi drivers, and the cities in which it operates. Cities are now grappling with how to better regulate Uber.<sup>179</sup> New York City's success in regulating Uber could inspire other cities to do the same and crack down on ride-hailing apps.<sup>180</sup> Whereas Uber once enjoyed a loophole to regulation through the court system, cities are now working to close that loophole by passing new regulations on Uber. While taxi companies have had little success in the courtroom, it seems as though they will have the best shot at regulating Uber by persuading their city legislators to pass new laws to better regulate Uber.<sup>181</sup> These new prospective regulations could turn the tables around on Uber and it will now be Uber that will attempt to make the same arguments that the taxi companies were once making.<sup>182</sup> However, from those cases, we know that differing regulations on the transportation industry need only pass rational basis review to be

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<sup>177</sup> *Id.*

<sup>178</sup> *See* Chiem, *supra* note 7; *see also* Checker Cab Operators, Inc. v. Miami-Dade Cty., 899 F.3d 908, 924 (11th Cir. 2018); Minneapolis Taxi Owners Coal., Inc. v. City of Minneapolis, 572 F.3d 502 (8th Cir. 2009); Ill. Transp. Trade Ass'n v. City of Chicago, 839 F.3d 594 (7th Cir. 2016).

<sup>179</sup> Chiem, *supra* note 7.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.* ("Given how overwhelmingly regulators have come out on top in these court battles, experts say taxicab groups will have to pivot toward influencing regulatory changes through legislation and can look to New York City as a beacon of light.")

<sup>182</sup> *Id.*

upheld.<sup>183</sup> With a standard like this almost any regulation on Uber will likely be upheld and Uber may be out of luck and out of loopholes.

Local legislators are going to have to not only look to the ride-sharing industry and its need for regulation, but as technology continues to advance, and the sharing industry as a whole continues to expand, lawmakers are going to have to take all of these new business models into account when passing new laws. Uber is a company that specifically should be watched due to its constant expansion into multiple areas of the sharing industry. For example, Uber has recently launched “JUMP bikes” which are electric bikes that people can rent through the app to get around town as an alternative to taking an Uber.<sup>184</sup> The user locates a bike through the app, and then when finished riding, secures it to “any public rack allowed by your city.”<sup>185</sup> Uber has also entered the food delivery market with its launching of UberEats, which allows one to order food through a restaurant that usually does not deliver and an Uber driver picks up the food and delivers it to the customer.<sup>186</sup> The customer can even watch in real time on the app and track where the driver is with his or her food.<sup>187</sup> New innovations like these will likely be subject to scrutiny and lawsuits alleging similar claims that Uber initially received when it first launched.

As long as technology continues to advance and new innovative business models impede different markets, local and state legislatures will have to constantly come up with new laws to regulate them properly. In order to regulate these businesses efficiently is to come up with new laws that are created with these specific business models in mind.

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<sup>183</sup> *Id.* (“As long as [a city’s] reasoning is rational, which is a very low standard, these cases are all going to continue to have the same result.”).

<sup>184</sup> *See generally* UBER, <https://www.uber.com/ride/uber-bike/> (last visited Jan. 30, 2019).

<sup>185</sup> *See id.*

<sup>186</sup> *See generally* UBER EATS, <https://about.ubereats.com> (last visited Jan. 30, 2019).

<sup>187</sup> *Id.*