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## Bleak Prospects for Cabbies’ Challenges to Uber, Lyft Regs – Law360 – Ethan B. Gerber Quoted

### FEATURED ATTORNEY

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August 24, 2018

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Taxicab companies and drivers claiming cities and municipalities are trampling their constitutional rights by carving out separate rules for ride-hailing services like Uber and Lyft are fighting a losing battle in court, experts say, after the Third Circuit recently joined other circuits in saying the local regulations were justified.

The Third Circuit’s precedential Aug. 20 [ruling](#) saying Newark, New Jersey, had a rational basis for crafting different rules for so-called transportation network companies like [Uber Technologies Inc.](#) and [Lyft Inc.](#) marks the latest setback for taxicab groups seeking the courts’ help in setting more hard-line rules for newer rivals whose growing dominance in the for-hire passenger transportation market is cutting into their business.

The Third Circuit has been in lockstep along with the Second, Eleventh and Ninth Circuits in finding that cities and municipalities haven’t violated taxicab companies’ and drivers’ rights under the takings clause of the Fifth Amendment or the due process or equal protection clauses of the Fourteenth Amendment.

*“It literally is the exact same arguments rejected in the exact same ways.”*

— Daniel H. Handman, a Los Angeles-based partner at [Hirschfeld Kraemer LLP](#), told Law360

The Third Circuit panel acknowledged that the taxicab and limousine companies that sued Newark over its \$10 million agreement with Uber are in an “undoubtedly difficult position” as a result of the city’s different rules. Newark in 2016 inked an agreement with Uber that called for the ride-hailing company to

pay the city \$1 million a year over 10 years for the right to operate in the city. Uber also agreed to provide \$1.5 million in liability insurance and conduct background checks on drivers under that deal.

But the “potentially unfair situation” created by the city allowing ride-hailing services to operate in Newark under less stringent regulations than those imposed on taxi and limousine operators cannot be fixed through constitutional and state law claims, the Third Circuit said.

Mike Nelson, a New York-based partner and co-chair of [Eversheds Sutherland LLP](#)’s class action team, explained that the challenge for taxicab companies and drivers in these cases is proving that the city or the local regulatory body deprived them of their property or their rights to earn an income.

*“It’s this mechanical argument [that the city] violated due process, violated the takings clause, but that’s not really what’s going on. What’s going on here is this is a new type of transportation system and it’s different enough from taxis that it’s being treated differently by governmental agencies. Taxi owners don’t necessarily like that.”*

— Mike Nelson

The ruling is the latest in a string of federal appellate court decisions siding with cities and municipalities on the issue.

Earlier this month, the Eleventh Circuit [affirmed](#) a district court’s [dismissal](#) of claims from taxi companies Miadeco Corp., B&S Taxi Corp. and Checker Cab Operators Inc. that Miami-Dade County’s 2016 ordinance legalizing app-based ride-hailing services violated the takings and equal protection clauses of the U.S. Constitution.

The cab companies claimed the county’s uneven regulations drastically diluted the value of their medallions, the city-issued licenses or permits they needed to operate cabs. Florida in 2017 enacted a law regulating ride-hailing service providers, which it calls “transportation network entities,” at the state level, which therefore preempted the Miami-Dade county ordinance.

The Second Circuit [ruled in May](#) that New York City properly justified crafting different regulations for Uber, Lyft and similar apps because the businesses were distinct enough from traditional medallion taxicabs operating in the Big [Apple](#). The panel affirmed the March 2017 dismissal of a suit from a group of trade associations and credit unions affiliated with the medallion taxi industry alleging New York City’s regulatory regime unconstitutionally created a different set of rules for the for-hire ground transportation industry that left traditional medallion taxicabs at a competitive disadvantage.

In March, the Ninth Circuit [refused to revive](#) a San Francisco cab company’s claims that the [California Public Utilities Commission](#) gave ride-hailing companies an unfair advantage when it designated them as charter services, finding that Desoto Cab Co. didn’t have standing to challenge the CPUC’s jurisdiction.

But the district court judge didn’t rely on standing when [ending the suit](#) in January 2017. U.S. District Judge Edward Chen determined that the CPUC only needed to show there was a “rational basis” for its decision to regulate ride-hailing apps, and noted there was “nothing to suggest” the CPUC’s decision was meant to harm cab companies. The judge added that ride-hailing services are not “de facto taxi companies,” citing the differences between a customer who hails a ride from the street and one who has pre-arranged a ride.

That distinction between street hails and prearranged rides has hampered taxicab companies and drivers’ efforts to get the courts to level the regulatory playing field.

*“As a legal matter, the same principles are being upheld in all of these cases, which is that you can’t force a city to regulate industries in a different way barring some very significant and completely irrational reasoning. As long as their reasoning is rational, which is a very low standard, these cases are all going to continue to have the same result.”*

— Daniel H. Handman

The bar was set in 2016 when the Seventh Circuit [affirmed](#) Chicago’s and Milwaukee’s regulations and concluded that traditional cab companies were clearly different from technology-backed newcomers like Uber and Lyft. Other district courts have similarly upheld regulations in Philadelphia, Boston and elsewhere, rejecting taxicab companies and drivers’ claims that local regulators went too easy on the newer entrants by crafting uneven rules that deprived medallion cabs of their equal protection and due process rights.

*“Anytime you get near new technology, advancement in technology, especially the stuff that has to be regulated, you can point to how it’s been done in the past but how it’s been done in the past is not necessarily relevant anymore because things have changed ... It’s like trying to say the government should guarantee my income, but it doesn’t work that way.”*

— Mike Nelson

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. Earlier this month, the New York City Council [approved a one-year freeze](#) on issuing new licenses to for-hire vehicles, which include app-based ride-hailing services, while also setting a wage base for drivers.

*“I don’t think that a win is in the cards for them as far as the courts are concerned. The way they can win these battles is not through a judicial process, but through like what happened in New York City recently. That would be a legislative or regulatory victory. The city just got so fed up with the flood of Uber and Lyft drivers and the problems that they seem to be causing, that they said, ‘We’re putting a halt on this until we can figure out what’s going on.’”*

— Daniel H. Handman, speaking about taxicab companies

New York City was motivated to act on the new rules following criticism of its laissez-faire approach to regulation, public outcry over the economic plight of traditional taxicab drivers and frustrations over growing traffic congestion.

Ethan Gerber, director of the transportation practice at [Abrams Fensterman Fensterman Eisman Formato Ferrara Wolf & Carone LLP](#), who has represented yellow taxicabs and limo companies, told Law360 that it’s important to take into account cities that issue medallions on a first-come, first-served basis or those, like New York City, that auction off medallions for hundreds of thousands of dollars and up to \$1 million.

*“Reading the decision, I don’t think Uber should celebrate. I think it’s a double-edged sword. It also expands the proposition that the municipality can regulate the entire industry, including ride-sharing, as long as those rules and regulations are rational.”*

— Ethan Gerber

Experts told Law360 that the first-of-their-kind limits that New York City placed on app-based ride-hailing services could inspire other cities and municipalities to [similarly crack down](#) on ride-hailing apps. So if New York City has taken a stand, Uber or Lyft might soon see the tables turned on them, where they'll be the ones fighting to upend seemingly unfair new regulations, according to Gerber.

*"These decisions that they were celebrating a short time ago are going to be used to enforce the rules and regulations that municipalities are coming up with. 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."*

— Ethan Gerber

So that could eventually evolve into tougher rules for ride-hailing apps where cities and municipalities will no longer treat them "like they're some kind of conveyance of information and start to treat them like they're transportation companies," Gerber said.

*"Uber and the other ride-sharing companies are going to be trying to attack [regulation] and making very similar arguments to what the yellow cab industry was making a few years ago and all these decisions are going to be used against them very shortly."*

— Ethan Gerber

*—Additional reporting by Bill Wichert. Editing by Kelly Duncan and Pamela Wilkinson.*