

November 15, 2013

**BY ELECTRONIC DELIVERY**

Alderman Terry L. Witkowski  
Alderman Robert J. Bauman  
Alderman James A. Bohl, Jr.  
Alderman Joe Davis, Sr.  
Alderman Robert W. Puente  
CITY OF MILWAUKEE  
200 East Wells Street, Room 205  
Milwaukee, Wisconsin 53202

Re: File 130903, increase of 100 taxis to Milwaukee's taxicab cap

Dear Chairman Witkowski and Public Safety Committee Members:

You have before you an opportunity to free Milwaukee's consumers and taxi drivers from the monopoly power of the city's taxi cartel by completely lifting the cap on the number of taxicabs. Unfortunately, File 130903 as it is currently drafted fails to do that. We at the Institute for Justice ask that you reconsider the current proposal and completely lift the cap.

The Institute for Justice is a non-profit libertarian public interest law firm. We litigate in various areas, including economic liberty, where we represent aspiring entrepreneurs in numerous occupations across the country. We also advocate for the expansion of economic liberty in various state legislatures and city councils.

We represent the plaintiffs in the case *Ibrahim, et al. v. City of Milwaukee*, No. 11-CV-15178, where the court ruled that Milwaukee's current cap on taxi licenses is unconstitutional under the Wisconsin Constitution. We have also represented transportation entrepreneurs in various other cases across the country. In one case we represented a taxicab entrepreneur in Minneapolis, Minnesota, where we fought on the same side as the City in a lawsuit and successfully defended its decision to completely lift its cap on taxicab licenses. That case is highly relevant to your current situation and is discussed below.

File 130903 calls for adding up to 100 more cabs. Although adding 100 cabs to the City's streets will allow a few drivers who currently do not own cabs to acquire cabs of their own, in the long run it will keep a taxi cartel in place. After the 100 permits are issued, future aspiring applicants will still have to go on the private market to get a permit. Those who hold permits issued before 1992, plus the winners of the one-time lottery, will be protected from

competition at the expense of everyone else. Further, although it is unclear from File 130903 whether new permits will be directly transferable, all a permit holder would need to do is put the permit in a corporate name and sell the corporation.

In short, a bigger monopoly is still a monopoly, and still violates the state constitution. Just as the Circuit Court found the existing system unconstitutional in the *Ibrahim* case, it will, we believe, find File 130903 unconstitutional for the same reasons.

You may understand this, yet fear lifting the cap because existing taxicab owners have threatened to sue the City, claiming that the City would owe them compensation for the “lost” value of their permits on the secondary market. The following explains that given the Institute for Justice’s experience in Minneapolis, the City should not fear a lawsuit by existing owners if it completely removes the cap.

### **File 130903 is Unconstitutional**

In striking down Milwaukee’s existing taxicab cap as unconstitutional in the *Ibrahim* case, Judge Jane Carroll was very clear in her reasoning. She stated that in instituting the cap, effective as of January 1, 1992, the City violated the Wisconsin Constitution’s equal protection and due process clauses because (1) the City created a cap *and* (2) taxicab permits were made transferable:

“It’s a cap plus . . . the abilit[y] of current permit holders to transfer those permits on the private market without the intervention of the City, without the approval of the City, simply notice to the City. Therefore, the combination of the two, the cap plus the transferability of the permit created a valuable asset for the permit holders as of January 1, 1992, that future applicants for a permit have no ability to access from the City. Therefore, the combination of the transferability and the cap creates the unconstitutional barrier . . .” Transcript of May 30, 2013 hearing, p. 14.

All File 130903 would do is add up to 100 transferable taxicab permits. Judge Carroll’s reasoning applies to it just as it does to the current cap.

### **The City Should not Fear a Lawsuit by Existing Taxicab Owners**

In 2006 Minneapolis phased out its cap of 343 taxicabs by adding 45 additional taxicab permits a year over five years, with the cap being completely removed at the end of that period. Soon after the reforms were adopted, the existing taxi owners sued, claiming that they should be compensated for the pre-reform value that their permits had been worth on the secondary market. We intervened in the case on the same side as the City, representing a new taxi owner who was able to operate in Minneapolis under the new permits. We moved to throw the case out of court,

Alderman Terry L. Witkowski  
November 15, 2013  
Page 3

which the trial court did. The U.S. Court of Appeals affirmed. It stated that when a city lifts a cap on the number of taxicabs, no compensation is owed to existing permit holders. The opinion was published as *Minneapolis Taxi Owners Coalition v. City of Minneapolis*, 572 F.3d 502 (8th Cir. 2009).

If the City of Milwaukee completely lifts its cap on the number of taxicabs—whether immediately or over a five year period as in Minneapolis—and the existing owners sue the City, the Institute for Justice would be very interested in possibly representing a taxi driver who benefited from the lifting of the cap, and intervening in the lawsuit to defend that decision. If the City merely adds a finite number of taxicabs and keeps a cap, however, we would not be so inclined.

Sincerely,

Anthony Sanders  
Institute for Justice

cc: Members of the Common Council  
Mayor Tom Barrett  
Assistant City Attorney Adam Stephens