TRANSPORTATION

Nashville's Anti-Competitive 'Black-Car' Regulations

A local jury approves a piece of Music City corporate welfare.

BY MARK W. FRANKENA

Like all large cities, metropolitan Nashville (pop. 635,000; 526 sq. mi.) has long had vehicles for hire. Besides taxis, which alone are permitted to use taxi stands and pick up street hails, the city has livery service "black cars," which are restricted to carrying passengers that have requested service by phone or online, and limousines.

For years, black-car service was free of municipal regulation. Nashville residents and visitors requested black-car service when they preferred its combination of service and fares to the available alternatives. Then, in 2010, Nashville's elected Metro County Council voted 38–0 to impose regulations on black cars. Some of the regulations make it impossible for them to compete for roughly half the trips they were providing and would have continued to provide absent the regulations.

The anticompetitive regulations harm Nashville's residents and visitors alike, and enable taxi and limousine companies to earn higher profits. Black-car companies filed a lawsuit in federal court in an attempt to eliminate the worst of the regulations, based on constitutional protections for economic liberty. Unfortunately, in January 2013 a jury voted 8–0 to uphold the regulations. This article tells the story behind those events, and why Nashville is worse off because of them.

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Taxis

A full understanding of this story requires a brief description of Nashville's for-hire transportation market. Like a majority of municipal governments, Nashville has long set taxi fares and limited the number of taxis. The fare is a flat $25 between any two of three popular locations that are eight to 10 miles from one another—Nashville International Airport, Gaylord Opryland Resort and Convention Center, and the downtown. For other trips, fares are $3 plus $2 per mile and a charge for waiting time. Most taxi trips appear to be $25 or less, plus tip. However, taxi trips between outlying suburban areas and the airport or downtown are $45 or more.

As of 2010, Nashville had granted a combined total of 585 taxi permits to five cab companies. Requests by drivers and others who wanted to set up new taxi companies, as well as requests by incumbent taxi companies for additional permits, had been rejected—though, as we'll see, that would change.

Nashville's government charged taxi companies an annual fee of $255 per permit. The taxi companies turned around and rented the permits to drivers, who supplied the cabs and were responsible for their operating costs. Because the government protected taxis from competition by prohibiting non-taxi vehicles for hire from using taxi stands and picking up street hails, and also limited the number of taxi permits, competition for permits among people who wanted to drive taxis drove the annual rent for a permit to between $7,500 and $10,000. The substantial permit

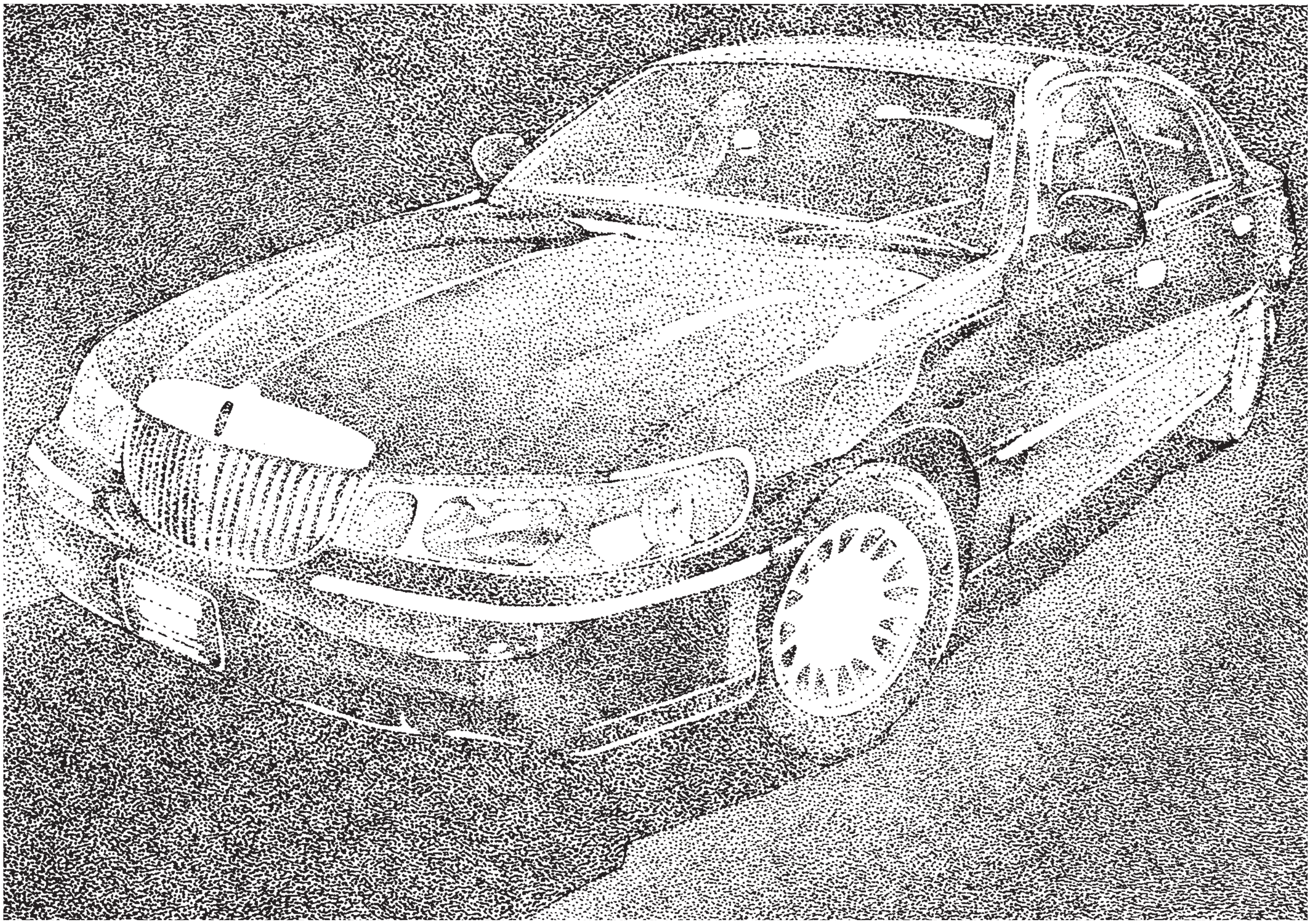

ILLUSTRATION BY MORGAN BALLARD

rental income for taxi companies and Nashville's refusal to grant additional permits demonstrate that Nashville was enabling the taxi companies to earn abnormally high profits. Importantly, the explanation for Nashville's shortage of taxi service was the government's limit on the number of taxi permits, not low profits as a result of competition from black cars.

Black Cars

Syed Bokhari emigrated from Pakistan in 2000 and was driving a Nashville taxi in 2005. The entrepreneurial Bokhari wanted to own and operate a company. After the Nashville government rejected his application to establish his own taxi company, he visited New York City, where he observed the success of black cars. Bokhari saw an opportunity to set up a black-car company in Nashville that would offer quality and customer service levels well above those of taxis while charging fares equal to or not much higher than those of taxis. Apart from a local ordinance that reserved taxi stands and cruising for taxis, at that time Nashville did not have regulations for black cars. However, Tennessee's vehicle safety and insurance requirements applied to black cars.

By 2009, Bokhari was an American citizen and his company, Metro Livery, was dispatching more than 30 vehicles, most of which were five- to 10-year-old black Lincoln Town Cars. In 2013, I took trips in three of his vehicles, including one that was eight model years old and had 383,000 miles. All three vehicles appeared new, were spotless inside and out, and rode as smoothly as new cars. The drivers had lived in the area most or all of their lives and, as a matter of company policy, wore suits and ties. Although I did not carry out a systematic survey of Nashville taxis, a casual check immediately revealed one that was both dirty and dented.

Initially, substantial shares of Metro Livery's business were accounted for by several niche demands, including trips arranged by hotel concierge clerks, trips by people who needed personal assistance in order to board the vehicle and then to reach their destinations (for example, the reception desk at a medical office), trips by people who had been drinking at local restaurants and bars, trips to or from areas where taxis refused to go, and airport trips by Vanderbilt students and others.

Soon the firm diversified and competed with limos for trips back and forth between suburban residences and restaurants, entertainment venues, and the airport. Metro Livery was able to compete with limos because service by limo companies, which operated newer Lincoln Town Cars as well as stretch limos, was both expensive and inflexible. Limos charge $65 or more for a trip to or from the airport, and some add a mandatory 20 percent tip. For other travel, limos charge $65 or more per hour, plus tip, and require a minimum rental of two or three hours. Also, limo companies require that reservations, changes, and cancellations be made at least several hours in advance. Operating costs for limo companies are high in part because the vehicles and drivers are often idle and return to the companies' places of business between trips.

Compared to limo companies, Metro Livery's business model was to provide service that was faster, with more flexible scheduling, at lower fares. The firm could do this in part because its vehicles did not return to the company location between trips. After dropping off a passenger, the car often remained in the area while waiting to be dispatched or went to a nearby area where passengers frequently wanted service. Some drivers also kept the company's cars at their homes between trips or overnight. As a result, Metro Livery vehicles averaged substantially fewer empty miles and less idle time than did limos. This translated into shorter passenger waiting times, lower vehicle and driver costs per trip, and flexibility to arrange, modify, and cancel trips on short notice. It also resulted in lower fares—but the Metro government reduced that advantage by imposing a minimum fare requirement in 2010.

Because of its high level of service and comparatively low fares, Metro Livery gained customers who otherwise would have used taxis or limos, as well as customers who would have used their own cars (even when they had been drinking) or public transit, or would not have taken the trips at all. The firm's success in selling its services demonstrates that those services made its riders better off. And it provided many jobs.

Anticompetitive Black-Car Regulations

In 2009, the Metro Transportation Licensing Commission staff put together an initial draft of potential regulations for non-taxi vehicles for hire, including black cars. It then sought feedback from providers of those services. In response, the limo companies formed the Tennessee Livery Association to lobby for their interests, which included reducing Metro Livery's ability to compete. The Metro transportation staff obtained feedback from a number of additional parties, including Metro Livery, Gaylord Opryland, and the taxpayer-subsidized Nashville Convention and Visitors Bureau.

The initial 2009 draft regulations contained a number of requirements that were included in the final regulations imposed by the Metro Council in mid-2010. Two examples are discussed here. The first is a requirement that black-car and limousine companies must have dispatchers at the companies' places of business. Metro Livery already employed dispatchers around the clock and therefore was not affected by this restriction. However, smaller companies relied on direct communication between customers and drivers with mobile phones. If enforced, Nashville's requirement to have dispatchers at the companies' places of business would substantially increase costs for small companies (a number of which have only one vehicle) and presumably would drive them out of business. Further, Nashville's requirement for dispatchers at the companies' places of business would prevent those companies from using an efficient third-party dispatch service, such as the Uber service that operates in Washington, D.C., and elsewhere.

The second example is a requirement that black cars commence all trips from the dispatchers' locations. If enforced, this requirement would eliminate an important efficiency that contributed to Metro Livery's ability to compete on service and fares against limos and taxis.

The initial draft also included a requirement that black cars and limos wait at least 15 minutes before picking up a customer after he requested a ride. However, Gaylord operated a transportation service and did not want a requirement that would force its guests to wait 15 minutes or more before they could travel between Opryland and the airport, and so this requirement was removed from the final draft.

The initial draft regulations did not include a provision regulating fares charged by black cars. However, the Livery Association lobbied the Metro transportation staff to add a requirement that black cars charge a minimum fare of $50 per trip. That fare was high enough to reduce significantly the ability of black cars to compete with limousines, which was in the economic interest of the Livery Association's members. As drafts moved through the Licensing Commission and Metro Council, the minimum fare requirement came and went. Eventually, the Livery Association and Gaylord privately hammered out amendments to the draft. They set the minimum fare at $45, giving the Livery Association most of what it wanted, and exempted transportation services operated by Gaylord and large hotels. As a result, Gaylord Opryland can operate an airport shuttle service with a round-trip fare of $40.

Metro Council adopted those amendments when it imposed the regulations in mid-2010. Tellingly, the taxi companies did not engage in lobbying during Nashville's development of regulations for black cars. They did not need to. The Nashville government was already committed to protecting cab companies. In numerous urban areas, this type of relationship between a municipal government and taxi companies has been described as

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"regulatory capture," which occurs when a regulatory agency, created to act in the public interest, instead promotes the economic interests of the companies it regulates.

Since Mid-2010

In April 2011, Metro Livery and two very small companies filed suit in federal court to overturn specific restrictions that reduced the ability of black cars and other non-taxi vehicles to supply transportation services. The suit challenged three specific requirements:

- the $45 minimum fare
- the requirement that cars be dispatched for each trip from the company's location
- a requirement that cars be no more than five model-years old when first put into service, and thereafter be no more than seven model years old and not have more than 350,000 miles

The third requirement did allow for waivers, but it gave Metro inspectors wide discretion to reject waiver applications. As a result, the future availability of waivers was unknowable. By comparison, taxis and limos can be up to nine and 10 years old, respectively. Also, black cars and limos are required to carry $1.5 million in liability insurance, compared to only $50,000 for taxis.

The first of the three requirements was not enforced until February 2012, the second was not enforced pending the outcome of the trial that was held in January 2013, and most vehicles that exceeded the new age and mileage limits were granted one-year waivers while the matter proceeded to trial.

Effects of minimum fare | Prior to enforcement of the $45 minimum fare, small black-car companies that operated in the airport-Opryland-downtown triangle charged $10 to $25 for most of their trips. Metro Livery, which served a larger area, charged less than $45 for about 40 percent of its trips. Enforcement of the $45 minimum fare made it impossible for small black-car companies to operate. Enforcement made it impossible for Metro Livery to compete not only for most trips in the airport-Opryland-downtown triangle, but more generally for most trips shorter than 15 to 20 miles. According to Bokhari, many customers who had been using Metro Livery for both short and long trips stopped using his firm even for long trips when its fare was no longer competitive for short trips. As a result, Metro Livery lost nearly half its business and was forced to cut the number of dispatchers, drivers, and other workers it employed by nearly half. The firm's net income dropped dramatically, and it stated that it would not survive if all the requirements were enforced and applications for waivers of the vehicle age and mileage requirements were rejected.

Nashville allows non-taxi vehicles to provide free trips. Its lawyers argued that the $45 minimum fare does not have a significant effect on the number of black-car rides purchased because black cars can charge $45 for an initial trip and simultaneously give customers coupons for free trips in the future. However, the drop in Metro Livery's business demonstrates that such coupons have limited value to many riders and do not have the practical effect of significantly mitigating, much less eliminating, the $45 minimum fare. And suppose that the Nashville government believed its claim that free-ride coupons prevented the $45 minimum fare requirement from reducing black-car ridership significantly. In that case, why would Metro Council have imposed the restriction, rejected attempts to repeal it, and gone to court to keep it?

Additional taxi companies and permits | There have been some interesting recent developments regarding Nashville taxis. Music City Center, a very large convention center under construction in downtown Nashville, is opening this year. Events at the new center will attract city visitors, give residents reasons to travel to and from downtown, and therefore increase the demand for taxis and other vehicles for hire. To accommodate, in August 2012 Nashville increased the number of taxi permits by 60, from 585 to 645. Fifteen of the additional permits were allocated to Nashville's largest taxi company, Taxi USA, which already had 205, and 15 were allocated to Checker Cab, which already had 90. The remaining 30 were allocated to a new company, Volunteer Taxi, which was organized and owned by Ethiopian-American drivers.

In January 2013, transportation regulators voted to permit an additional 110 taxis, bringing the total to 755. Fifteen of the additional permits were allocated to Volunteer Taxi, bringing its total to 45, and 35 were allocated to Tenn-Cab, a new company organized and owned by Somali-American drivers. The remaining 60 permits were allocated to two more new companies, Quick Cab and Green Cab, which will use only hybrid, compressed natural gas, and bio-fuel vehicles. Yellow Cab opposed the latest increase in permits, presumably because, in the hands of other companies, they would reduce the value of Yellow Cab's 125 permits.

Alleged justifications for minimum fare | No sound economic argument for the $45 minimum fare was ever offered by Nashville's transportation planners, politicians, or lawyers when the restriction was under consideration, when it was imposed, or during the lawsuit that sought its overturn. Indeed, no sound argument could have been made in light of economic principles and facts.

Both before and at trial, Nashville argued that the city needs companies that offer taxi service and that taxi companies would be likely to go out of business without protection beyond prohibitions against cruising and use of taxi stands by black cars. This argument is nonsense. Black cars compete with taxis in every large city in the United States, only a small share of those cities have additional restrictions on black cars, and there has been no report of the demise of taxi service. When the number of taxis in a market is limited by the government, the addition of black cars to the market increases the availability of taxis to people who prefer them.

From 2005, when Metro Livery was founded, through today, Nashville taxi companies have been profitable. The proof is that people applied for permits for additional taxis and new taxi companies, and the taxi industry expanded to the full extent permitted by the government. An additional element of proof is the difference between the annual $255 fee that Metro Nashville collected for each taxi permit and the annual $7,500–$10,000 that taxi companies earned by renting each permit to a driver. Taxi company expenses for dispatch service and office operation are likely to account for no more than a small fraction of that difference.

A second alleged justification was that without the $45 minimum fare, drivers would stop driving taxis and start driving black cars. Metro Nashville's lawyer pointed out to the jury that Bokhari did precisely this. This argument overlooks the fact that when anyone stopped driving a taxi, he or she released a taxi permit that was rented by someone else, so there was no reduction in the number of taxis in service.

A third alleged justification was that the $45 minimum fare supposedly would lead to a desirable increase in the incomes of black-car drivers, supposedly by increasing the profits of black-car companies and, in turn, the incomes of drivers. This argument is doubly wrong. First, when black-car fares are increased, ridership declines so much that company profits decline. This is demonstrated by the experience of Metro Livery since enforcement of the minimum fare began. Second, even if, contrary to fact, black-car companies earned greater profits when the government required them to charge higher fares, higher profits would not give the companies an incentive to pay drivers more. The amounts that companies pay their workers are determined primarily by conditions of supply and demand in labor markets. In fact, the $45 minimum fare in Nashville caused a substantial share of black-car drivers, dispatchers, and other employees to lose their jobs.

A fourth alleged justification was that the $45 minimum fare would make Nashville more attractive for tourists and conventions, presumably by getting rid of junky black cars. The person who made this argument in court apparently had not ridden in one of Metro Livery's sedans, most of which are Lincoln Town Cars that are maintained in immaculate condition. I believe they are better rides than most of the taxis in the United States. In fact, the $45 minimum fare will make Nashville less attractive for tourists and conventions by increasing the cost and reducing the availability of for-hire transportation service.

A fifth alleged justification was that the $45 minimum fare would reduce confusion about what riders would be charged by black cars. However, there is no evidence that consumers were confused. A black-car dispatcher or driver will tell a customer what the fare will be before a trip begins. By contrast, if they take taxis, riders know only that they will be charged whatever the fare on the meter turns out to be, and this amount may be elevated if the driver does not take the shortest route or encounters congestion. In any event, a prohibition on fares below a certain level would not increase the well-being of riders who might be anxious about paying too much.

TABLE 1

Minimum Fare Requirements for Black Cars

Minimum Fare (excluding tip)	Jurisdiction	Comments
$15	Edgewater, N.J.	In the New York City MSA
$25	Atlanta, Ga. (non-airport trips); Hot Springs, Ark.; Medford, Ore.; Orlando, Fla.	
$30	Little Rock, Ark.	
$35	Lynn, Mass.	In the Boston MSA
$40	Atlanta, Ga. (airport trips); Hillsborough County, Fla.	Hillsborough County is in the Tampa MSA.
$45	Nashville, Tenn.	
$50	Portland, Ore. (airport trips)	There is also a required minimum fare for non-airport trips that is set 35 percent above prevailing taxi fares.
$55	Austin, Texas	
$58	Houston, Texas	Required minimum is $70 including tip.
$70	Miami-Dade County, Fla.	
$105	New Orleans, La.	However, advertised airport trips start at $61 plus tip.

Alleged justifications for dispatch restriction | Both before and at trial, Metro Nashville employees offered truly bizarre justifications for the requirement that black cars begin each trip at the company dispatcher's location. Among those justifications:

- Black cars that are not kept at the dispatcher's location may not be watched carefully and may be sabotaged in a manner that would not be detected and that would endanger passengers.
- If black cars are required to return to the dispatcher's location a number of times a day, the company may be more likely to notice damage to the cars that the drivers would have ignored.
- If black cars are kept in one place, it may be easier for city inspectors to find and inspect them. (Never mind that city inspectors do not go out to inspect cars.)
- If a rider thinks he or she may have left a cell phone or wallet in a black car, it may be easier for the rider to recover the item if the car returns to the company location after every trip.
- People who drive public transit buses do not take buses home overnight, so why should black-car companies be allowed to permit their drivers to take cars home?

Nashville actually used taxpayers' money to pay employees and consultants to come up with such nonsense and present it to a jury in federal court.

Federal law | Metro Livery claimed that Nashville's $45 minimum fare and dispatch requirements for black cars violated the Fourteenth Amendment's economic/occupational liberty protections. The lawsuit was tried before a jury during January 22–25, 2013. The judge instructed the jury to decide on the facts based on the evidence presented to it and to apply the law as he stated it to these facts. In order for the jury to find in favor of Metro Livery on either requirement, my layman's understanding is that the jury needed to conclude that a rational person could not so much as speculate that the requirement in question might advance one or more legitimate government interests. This is known as the "rational basis" test. In the case of local transportation, a legitimate government interest might be to increase public safety or to increase the likelihood that good taxi service would be available.

The jury was not asked to consider the likely magnitude of any such advancement of a legitimate government interest, nor any costs of the requirement. Thus, a requirement that could yield an increase in safety that would be worth at most $1,000 to people in Nashville would withstand legal challenge even if it was certain to cause $100,000 in damage of other types (e.g., reduced availability of transportation) to people in Nashville.

Nashville hired Matthew W. Daus, president of the International Association of Transportation Regulators, to provide potential justifications for the challenged requirements. The nonprofit public interest law firm Institute for Justice, which aided the plaintiffs, hired me to provide an economic evaluation of the justifications Daus alleged. However, the judge decided that the jury did not need to hear from consultants who arrived on the scene after the regulations were imposed.

Trial outcome | The judge decided that there was not enough evidence to support the plaintiffs' challenge to the vehicle age restriction, and ruled against the plaintiff on that issue without sending it to the jury. The jury voted 8–0 in support of the constitutionality of Nashville's $45 minimum fare and dispatch requirement for black cars. The jury was not asked to disclose how it concluded that a reasonable person would think that the requirements were likely to advance at least one legitimate government interest.

Beyond Nashville

Nashville is not alone in imposing anticompetitive regulations on black cars. Nashville is one of 16 jurisdictions that impose minimum fares on black cars. The minimum fares for 15 of those jurisdictions are listed in Table 1. The 16th jurisdiction is Toledo, Ohio, which imposes a comparatively low minimum fare of $2.30 per mile on black cars, which is below the regulated taxi fare of $2 plus $2.30 per mile.

Twelve of the 15 jurisdictions in Table 1 are located in (but in some cases account for only a small portion of) the 50 largest U.S. metropolitan statistical areas, based on population. The exceptions are Hot Springs, Ark., Little Rock, Ark., and Medford, Ore. The fact that 76 percent of the 50 largest MSAs apparently do not contain any jurisdiction with a minimum fare requirement for non-taxi vehicles for hire undercuts Nashville's claim that its minimum fare is necessary for the survival of taxi service. But the imposition of this type of anticompetitive regulation by more than a dozen governments is a reminder of the frequent wrongheadedness of governments that deny the benefits of free markets to the many while increasing profits for a select few. The Institute for Justice is now working with suppliers of black-car services in Portland, Ore., to have the minimum fare in that city overturned.

Nashville is not alone in raising the costs of black-car service by restricting vehicle age. Atlanta, Buffalo, N.Y., Chicago, Houston, Little Rock, New York City, Seattle, and Windsor, Calif., also restrict the ages of black cars when they are put into service, or when they must be retired, or both.

Some cities have anticompetitive restrictions on black cars that Nashville does not have. Five cities further harm their residents and visitors while protecting taxi companies by requiring that black-car service be arranged at least 30 minutes before pickup: Jacksonville, Fla., requires 30 minutes, Miami and Portland, Ore., require one hour, Worchester, Mass., requires two hours, and Lynn, Mass., requires eight hours. Buffalo, Princeton, N.J., and Worchester limit the number of livery vehicles.

Conclusion

In 2010, Nashville's Metro Council imposed anticompetitive restrictions on black cars. The restrictions harm Nashville's residents and visitors while enabling its taxi and limousine companies to earn excess profits. The Institute for Justice argued that these restrictions violated constitutional guarantees of economic liberty and equal protection of law because they bear no rational relationship to a legitimate government objective. In 2013, a jury rejected those claims and voted to uphold the restrictions.

Fortunately for Nashville's residents and visitors, between mid-2012 and early 2013 the city increased the number of taxi permits by 170 (29 percent) and allocated 140 of those permits to four new taxi companies. Nonetheless, the minimum fare and dispatch restrictions for non-taxi vehicles for hire continue to cause consumer injury and misallocation of resources and to deny economic opportunity to Metro Livery and others. R

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