

Statement of Ken Williams, private citizen

Madam Chair

As before I thank you for the opportunity to speak before the Council, and I pray that both your leadership and your commitment to both integrity and legacy will effect an "about face" in the way our City is responding to the desperate plea of our over 8,000 taxicab drivers. Such a conversion is morally required by any claim of respect for human dignity.

In previous statements, I have drawn attention to the fact that the Fenty administration's policies and practices are clear and outrageous violations of the human rights of these workers under articles 23-25 of the U.N. Declaration on Human Rights. I have also noted that there is a set of commitments that were made to the drivers by the Taxicab Commission and its Chair in April of 2009 including 1) the completion of a rate study as is required by law and readily supportable through the drivers' assessment fund and 2) lifting the meter rates by a "drop dead deadline" of September 15, 2009.

Every driver I have talked with has said that he lost at least 30% of his income when the switch was made from zones to meters. The vast majority have had to increase their hours, many now working 12 hour days or 7 days a week, spending less and less time with their children. I pray therefore that the Attorney General's office evolves into full and perfect clarity that we are dealing here with more than economic loss. Here we have a sea of incredible physical and emotional pain and suffering. Consider the impact on your body if you were compelled to shift from driving a car on the streets of D.C. from a 50 hour week to a 70 hour week. Consider also what it is to know as you drive around the City, hoping to find a fare in a glutted market, that your children now fall asleep without you there to wish them good night.

I have looked into what has happened to these drivers, and as I have listened to their stories, I have not been shocked or appalled or troubled as you would often hear from a friend of workers at a hearing such as this. Those words are too mild for the moment. Rather, I am absolutely horrified at the horror that they and their families have been through, much of which still remains to be brought into public view. And somehow the most important things were lost along the way in debates over what type of meter to use and in muddy litigation over questions of the Mayor's authority and federal supremacy.

But this story goes beyond the call of empathy. This story goes to the heart of democracy in our nation's capital. By no means did the Congress ever express a clear and manifest intent to annul or repeal the D.C. Taxicab Establishment Act. That Act of a previous Council and Administration created a regulatory body with real power and responsibility, including the charge to issue regulations and set the rates. And it is perfectly and unequivocally clear from prior legislative history that the intent of Congress was to reduce confusion about the calculation of fares under the old zone system rather than to give the Mayor rate setting authority under some bazaar interpretation of the word "implement".

But even as this matter is not merely a matter of empathy, it is not legally purely a question of federal supremacy either. Rather It is about restoring and sustaining the balance of power within this City for posterity and whether or not we believe in a system of checks and balances. Section 404b of the Home

Rule Act" states: "**The Council** shall have the authority to create, abolish, or organize any office, agency, department, or instrumentality of the government of the District and to define the powers, duties, and responsibilities, of any such office, agency, department, or instrumentality." Strangely, *that passage* was not quoted in the litigation, though we do of course find ample citation on the *Mayor's* authority.

In my view, the previous litigation and judge's opinion should have focused more squarely on whether or not Congress had the explicit, clear, and manifest intent to annul entire sections of the D.C. Taxicab Establishment Act of 1986 **and** to repeal Section 404(b) of the Home Rule Act. We should recall that the Home Rule Act was not an Act of the Council. It was ***a prior Act of Congress***, and therefore the appeal to federal supremacy falls flat on its face. And should the Council take this entire legal dispute as settled, it will have given a blank check to the Mayor to take some other directive, perhaps to be inserted into this Omnibus Budget Bill now under consideration, as granting him absolute regulatory authority over some other industry and the livelihoods of some other entire classes of workers under the guise of "an emergency."

The ruling by Judge Hedge was profoundly flawed, in my view, as even the Judge acknowledged that under Section 422, article 11, of the Home Rule Act "The Mayor is authorized to issue and enforce administrative orders not inconsistent with this or any other Act of the Congress or any Act of the Council." And yet the Mayor has in fact issued and enforced orders that seem to me quite inconsistent with Home Rule, the D.C. Taxicab Establishment Act, and perhaps a few other prior acts of Congress like one or two amendments that were lovingly tacked onto the U.S. Constitution.

But beyond the questions of the correct legal standard for this case (clear and manifest intent) and which laws were annulled and the trampling of constitutional rights, we also have two statements that were submitted as part of the administration's material defense against accusations of arbitrary and capricious rulemaking. One of those was a statement from Mr. Swain, Chair of the Taxicab Commission. The other was a statement from Mr. Kubly, who serves on the Taxicab Commission, specifically on the Panel of the Commission that is charged with issuing regulations and establishing the fare structures. Mr. Kubly acknowledges in his statement that he played an active role in the development of the new regulations.

In these statements you will find them citing a 2005 George Washington University study, and you will see them advising the Court that drivers in the study made more under a meter system than they did under a zone system *when you consider trips from 4-15 miles*. However, though the study was attached as an exhibit, what they failed to note in their statements was that one of the major findings of the study was that both the median and the average fare under a meter was less than the average fare under a zone system. 19 out of 21 drivers made less under the experimental meter system. And the 20th driver made an average of a mere penny more under meters than under zones. And while it is true that the drivers made more under meters for trips from 4-15 miles, the average trip was in fact 3.87 miles, nowhere parked between 4 and 15 miles. In fact, under six out of nine distance scenarios examined in the study, the driver's made less under meters than zones. Yet the Chair and the Commissioner chose to focus the Court selectively on the three out of nine distance scenarios where the drivers appeared to fare better, so to speak, under the meters.

The median fare for a trip under a meter drew \$1.xx less than the median fare under a zone system. The average fare under a meter was 53 cents less than the average fare under a zone system. And though that differential may sound "minimal" to the Attorney General's office, if you multiply it times 20 trips a day and 24 days a month, you will see drivers losing over \$250 a month, hardly insignificant to someone who is trying to hold onto his home, send a child to college, or put food on the table.

I don't think that this study should have been used for the purpose of portraying the administration as having exercised its duty of care in the rulemaking process. And we know that the administration continues, as Cicero used to say, *audacia cum effrenata*, with unbridled audacity, to refuse to conduct a rate study as is required by law every two years. Back in April of 2009 Mr. Swain said that an RFP for such a study was in procurement and would be turned around within 45 days. The Commission has asked for that study repeatedly. The driver's assessment fund was explicitly created to support such rate studies among other things. And so I ask you to look into who stopped that procurement process and on what grounds. Furthermore, we know that actively licensed drivers do not have their rightful place at the regulatory table through fair representation on the Taxicab Commission, as is required by law, thereby violating the fundamental democratic principle of participation and inclusive decision making.

But we are also asking you to launch a probe into whether or not the personnel policies or ethics code of the District have been violated. The Citizens and the taxicab drivers are entitled to know whether or not there has been any appearance of conduct that falls short of the City's "unusually high standards" of integrity and impartiality as stated in Sections 1800.2 and 1803.1(a)(6) of the District Personnel Manual. If, and I emphasize the word if, it should be found that the Chair of the Commission and a prominent member of that Commission, who is also a government employee, submitted statements to the Court that were potentially misleading or negligently incomplete or that reflect an arbitrary and capricious "cherry picking" of data from a study that may have been improperly used to defend the administration against a charge of arbitrary and capricious rule making (and rate setting), then I should think that that sort of conduct could undermine public trust in government and could merit some form of action, particularly when the livelihood of an entire class of workers is at stake. But let me be clear. We are not saying that either the Chair or the Commissioner made false or inaccurate statements regarding trips from 4-15 miles. Rather we are requesting that the Council review the statements and the associated study to see if they included the whole truth or the most important truth.

Madam Chair, here you have a population that has been using terms such as starvation and slavery in public hearings. The City's financial liability for the driver's pain and suffering continues to mushroom beyond measure, even as democracy languishes, and the Council may itself become over time not unlike the Taxicab Commission, a body that recommends rather than rules.