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Dear California Public Utilities Commission,

On behalf of the R Street Institute, I respectfully would like to offer comments on the commission's consideration of a rule requiring fingerprinting as part of background checks of prospective transportation network company drivers. R Street is a Washington, D.C.-based think tank. It is a nonprofit, nonpartisan research organization that engages in policy research to promote free markets and limited, effective government. It is highly involved in issues related to TNCs and the emerging "sharing" economy. I am its Western region director, based in Sacramento.

We would oppose rules mandating fingerprinting of drivers who contract with TNCs. Public safety is paramount, of course, but there's little evidence such rules improve safety – and they create unfair burdens on many potential drivers given the nature of the FBI database.

Fundamentally, the FBI criminal history database is not a database of convictions, but a database of arrests. About half the records in the database do not include information about the final disposition of the case (e.g., whether the arrest resulted in a conviction, acquittal or expungement, or if the case was even pursued). That's significant, because around a third of felony arrests do not lead to a conviction. Among those who are convicted, 30 percent are convicted of a different offense than the one for which they initially were charged (often a lesser offense or misdemeanor).

Further, while the FBI provides a process for individuals to challenge faulty background information, this process can be time-consuming and difficult to navigate. As a report by the National Employment Law Project states:

"When a faulty FBI record stands between the worker and the government agency that is responsible for certifying suitability for employment, job seekers are frequently unable to navigate the complex maze to correct the record and therefore lose out on job opportunities through no fault of their own. Because many criminal justice records are not readily available, individuals often have to travel directly to the sentencing court or arresting agency to obtain proof of the final disposition—which may mean traveling to a courthouse or law enforcement agency in a different county or even state. If an arrest did not result in actual charges, there is likely no court record available. In that instance, the individual must 'prove a negative' and obtain paperwork verifying that no official action was taken after the initial arrest."

The federal government itself recognizes the limitations of using the FBI database for background checks. In 2009, the FBI's Advisory Policy Board formed a Dispositions Task Force to look at the lack of completeness in criminal history records. But while the government has identified the problem, there is currently no timeframe in place to correct it.

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Because so many of the FBI's records are incomplete, the checks can unintentionally become a means of injustice. As Sen. Chuck Grassley, R-Iowa, (chair of the Senate Judiciary Committee) put it:

"[I]f an employer uses the [FBI] database for hiring purposes, the records can be inaccurate and old. And, just as bad, the database includes arrest records that never resulted in a conviction. It's unfair that an arrest—not resulting in a conviction—is included in a criminal background check. And, while there is a process by which people can contest their records being in the database, there are flaws in that process that need to be looked and changed."

Until this happens, regulators should be wary of requiring individuals to pass these checks as a condition of employment.

Thank you for your consideration.

Best regards,

Steven Greenhut
Western Region Director
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