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Testimony from:

Steven Greenhut, Resident Senior Fellow and Western Region Director, R Street Institute

In SUPPORT of House Bill 2019 relating to the Kansas transportation network company services act that establishes conditions for when a driver is an independent contractor.

January 24, 2023

Kansas House of Representatives
Committee on Transportation and Public Safety
State Capitol. 300 SW 10th Ave.
Topeka, KS 66612-1590.

Dear Chair Francis and committee members,

I am writing on behalf of the R Street Institute (“R Street”) to support House Bill 2019, which would assure that rideshare drivers in Kansas have the right to work as independent contractors provided the transportation network companies conform to some reasonable conditions.¹ This sensible measure protects the rights of drivers while allowing companies such as Uber and Lyft to flourish. The bill also advances the interests of consumers, who have come to depend on this generally safe, affordable and convenient form of transportation.

R Street is a Washington, D.C.-based think tank that champions market-oriented reforms in a variety of policy areas, including commercial freedom. We have done extensive work on independent contracting, especially as it applies to ride-sharing and delivery companies. In our view, these ridesharing services are a noteworthy market innovation. They have revolutionized the transportation industry and—thanks to the wonders of competition—have forced legacy ride providers (e.g., taxicabs and shuttle companies) to improve their offerings.² They have provided millions of job opportunities to workers who value their independence and work flexibility.³

In a market-oriented economy, companies need the freedom to innovate and workers need the ability to negotiate working terms that suit their particular lifestyles—even if these innovative arrangements threaten the interests of politically powerful trade groups who often lobby state legislatures and federal officials to impose anti-competitive laws and rules that stifle emerging industries and technologies.



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As R Street's Sacramento, California-based Western region director, I can attest to the dangers of allowing such anti-competitive forces to succeed and the importance of passing proactive legislation such as HB 2019. In particular, I have closely tracked the disastrous effects of California Assembly Bill 5, which applied a stringent "ABC Test" to independent contracting decisions and forced most companies (including ridesharing firms) to hire drivers as permanent workers.⁴ After that legislation disrupted our economy and threatened livelihoods, the Legislature backpedaled by passing more than 100 industry exemptions.⁵ However, the measure continues to leave the future of the current ridesharing model in doubt. The courts are still considering a challenge to a voter initiative that exempted drivers from the test.⁶

The Kansas Legislature is too wise to follow in California's footsteps, but the Biden administration has embraced policies that would implement elements of that test via the regulatory process. Most recently, the Department of Labor has sought to impose a stricter test for determining when companies can use independent contractors for wage-and-hour purposes. The clear goal is to make this "ABC Test" the de facto federal standard.⁷ Such federal rule changes will not directly affect Kansas law, but they could create uncertainty in the courts. HB 2019 makes it clear that Kansas rideshare drivers—like those in 20 other states—may remain independent contractors.

The "ABC Test" has specific requirements for a company to classify its workers as contractors: a) the worker must not be under the direction of the employer; b) the worker must not be involved in the company's usual course of business; and c) the workers must have evidence of being in business for themselves—such as operating an LLC or proprietorship.⁸ That standard would destroy the ridesharing model. Supporters of this test apparently want to force workers into an antiquated 9-5 working model more appropriate to a factory floor or office cubicle.

By contrast, HB 2019 would enact a simple test that is fair to workers and employers alike. It classifies all transportation network company drivers as independent contractors provided that the company does not prescribe specific hours, does not restrict drivers' ability to work for other rideshare companies and does not stop them from working in any other occupation. Workers must also agree in writing that they are independent contractors. This test promotes freedom, individual choice and the market economy.

For consumers, ridesharing offers a convenient and comfortable way to get around without the hassles of calling a cab. It is no surprise that these services have been particularly popular among elderly people and those with disabilities.⁹ It also improves public safety. In June, a Columbia University researcher reviewed 20 studies (including 14 that were peer reviewed) and found that the availability of ridesharing reduced drunken driving-related collisions.¹⁰

Polls show that ride-share drivers overwhelmingly prefer their status, which enables them to use these driving jobs as fill-in work as they pursue other professional and educational opportunities. Eighty-six



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percent of drivers cite this scheduling flexibility as a reason they pursue this work.¹¹ In other words, drivers generally rely on this work to supplement their income and to do so in a unique way that fits their schedule rather than their employers' schedule. That is an astonishing development—and this Kansas measure will help assure that these jobs remain available.

There is no reason these drivers should not be allowed to earn a living—or supplement their income—this way. There is no reason that ridesharing companies, which have greatly improved our mobility, should not be free to grow as much as the marketplace supports them. There is no reason consumers should not have this valuable option. HB 2019 removes any uncertainty and makes it clear that whatever the federal government does, Kansas allows rideshare drivers to remain independent. We urge the committee to pass this important legislation.

Thank you for your consideration.

Sincerely,

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¹ House Bill 2019, Establishing conditions for when a driver is an independent contractor for a transportation network company, Kansas Legislature.

² Scott Wallsten, "Has Uber Forced Taxi Drivers to Step Up Their Game?" *The Atlantic*, July 9, 2015. <https://www.theatlantic.com/business/archive/2015/07/uber-taxi-drivers-complaints-chicago-newyork/397931>.

³ Melissa Berry, "How Many Uber & Lyft Drivers are There?," Ride Share Guy, Nov. 1, 2022. <https://therideshareguy.com/how-many-uber-drivers-are-there>.

⁴ Employment Development Department, "Employment Status: ABC Test," State of California, last accessed Nov. 14, 2022. https://edd.ca.gov/en/Payroll_Taxes/ab-5.

⁵ Stephen Fishman, "Exempt Job Categories Under California's AB5 Law," *Nolo*, last accessed Jan. 24, 2023. <https://www.nolo.com/legal-encyclopedia/exempt-job-categories-under-californias-new-ab5-law.html#:~:text=AB5%20makes%20an%20exception%20for,%2C%20lyricists%2C%20composers%2C%20and%20p roofers>.

⁶ Suhauna Hussain, "Prop. 22: California gig companies, workers get their day in appeals court," *Los Angeles Times*, Dec. 13, 2022. <https://www.latimes.com/business/story/2022-12-13/california-prop-22-appeals-court-hearing-weighs-gig-workers-fate>.



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⁷ Steven Greenhut, “Opposition to the Department of Labor’s Proposed New Independent Contracting Rules,” R Street Institute, Nov. 21, 2022. <https://www.rstreet.org/2022/11/21/opposition-to-the-department-of-labors-proposed-new-independent-contracting-rules>.

⁸ Employment Development Department, “Employment Status: ABC Test,” State of California, last accessed Jan. 24, 2023. https://edd.ca.gov/en/Payroll_Taxes/ab-5.

⁹ “8 Ridesharing Services for Seniors,” DailyCaring, last accessed Jan. 24, 2023, <https://dailycaring.com/8-ridesharing-services-for-seniors>.

¹⁰ Cara Murez, “More Evidence Uber, Lyft are Reducing Drunk Driving Crashes,” *US News and World Report*, June 28, 2022, <https://www.usnews.com/news/health-news/articles/2022-06-28/more-evidence-uber-lyft-are-reducing-drunk-driving-crashes#:~:text=Morrison%20reviewed%20%20studies%20that,driving%20and%20alcohol%2Drelated%20crashes>.

¹¹ J. Edward Moreno, “Uber poll: Drivers ‘overwhelming support’ independent contractor status,” *The Hill*, Aug. 25, 2020. <https://thehill.com/policy/technology/513506-uber-poll-drivers-overwhelmingly-support-independent-contractor-status>.