



**Testimony of Brendan Sexton, Executive Director
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Before the Joint Legislative Public Hearing on 2020-2021 Executive Budget Proposal:
Topic Workforce Development
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Good Morning Chairs Krueger, Weinstein, and members of the Senate Committee on Finance and Assembly Committee on Ways and Means. My name is Brendan Sexton and I am the Executive Director of Independent Drivers Guild (IDG). I would like to thank the Committees for the opportunity to testify on key issues we are facing in a new era of work in America, New York State, and specifically on the Governor's budget proposal on New York Digital Marketplace Worker Classification.

New York has always been a labor leader and we have an opportunity to make real change and give 120,000 for-hire vehicle drivers in New York State a real voice, real power, and a real chance at attaining collective bargaining rights. A right to bargain is a critical step to build worker power in an often exploitative industry, but for too long broken federal labor laws have failed workers. New York can change that and create a real right to bargain in our state, removing the hurdles thrown up by the Trump Administration. While we were very happy to see a collective bargaining provision in the Governor's Digital Marketplace Worker Classification proposal, many questions remain and much work needs to be done to actually make this a reality. We look forward to continuing to work with the Legislature, the Governor and our brothers and sisters in the AFL-CIO and other labor advocates to provide drivers with a path to unionization and collective bargaining

We are at a crossroads. On one side is a path plagued by continued worker exploitation and a loss of many of the protections and rights we have already fought so hard to achieve. On the other side is an avenue which leads to a future where workers are afforded the power to control their own destinies -- where workers are respected. We firmly believe that now is the time to act. In order to effect revolutionary and life-changing reforms, New York State must provide for a legal frame work under which drivers can unionize and collectively bargain without fear of discrimination or retaliation.

As you know, IDG is a nonprofit affiliate of the International Association of Machinists and Aerospace Workers (IAMAW), and our organization represents over 80,000 drivers working throughout the for-hire vehicle industry. The IAMAW is the only union to successfully organize black car workers in New York City, and has been doing so for over twenty years.

As representatives of New York's ride-hail drivers, we are proud of our landmark victories which put over \$1 billion dollars directly in the pockets of drivers. Unfortunately, outside of New York, ride hail drivers across America still have no benefits or protections. However, with your help, in 1999, the Machinists Union successfully campaigned for the first workers' compensation program

for independent for-hire-vehicle drivers. In recent years we have organized to secure important improvements and benefits of particular importance to ride hail drivers, including requiring a tipping option in the Uber app and suitable bathrooms for drivers at the airports. Through organizing with our Guild, drivers in New York have won the nation's first minimum pay protection for ride-hail drivers, securing a minimum rate of \$27.86 per hour. The minimum pay rate is far higher than the state's minimum wage or tipped minimum wage, in order to account for the extremely high operating expenses in this industry as well as the costs associated with being classified as contractors. We also secured benefits of particular importance to our sector through the Black Car Fund, including a death benefit for drivers killed on the roads, free glasses and vision care, as well as the ability to connect with a doctor via phone or video chat 24 hours per day, seven days per week.

New York's for-hire vehicle industry has also been rocked by a mental health crisis marked by driver suicides. And so we took it into our hands to not only tackle the root problem of fair pay, but to also address mental health and wellness with free counseling in six languages. We have provided grief counseling to families who have lost loved ones to suicide and violence, we provided trauma counseling for a driver whose passenger was murdered in his vehicle and helped him make workers compensation claims as his car was impounded and he was unable to work. We provided crisis support for a driver facing eviction and another facing bankruptcy because he was unable to work due to illness, among others. When we heard from one driver in suicidal crisis, we connected him immediately with one of our licensed counselors who could speak to him in his native language and got first responders out to his location. The paramedics later called us to thank us and told us we saved a life that day.

Now we are calling on New York State to pass legislation giving ride-hail drivers the right to unionize with collective sectoral bargaining agreements. If New York passes a Right to Bargain law, we will be blazing a trail for growing our unionized workforce and the largest organizing gains in the history of New York State.

Today, too many workers have no voice. As the rich get richer, workers wages remain stagnant. It's becoming impossible to get ahead. Union membership has dropped to a record low in the United States, with just six percent of private sector workers represented by a union. At the same time over 85 percent of workers want to belong to a union, and that figure is even higher among our members, 95 percent of whom want representation according to a poll conducted by Greenberg Quinlan Rosner Research. This disconnect is because our system is broken and our labor laws are rigged. Time and again we have seen workers bravely take on unionizing corporate giants only to be defeated by a system that sets them up to fail. The Trump administration's National Labor Relations Board is only seeking to make it harder for workers to get the representation they seek. This leaves millions of workers struggling on their own under the heavy hand of multinational corporations and Silicon Valley billionaires. Whether you are a retail worker, an app-based driver or a food delivery worker, the current system of worker justice is an abject failure. This is undeniable.

The dramatic overhaul to our broken federal labor laws that workers need is not going to happen this year under this anti-worker Trump administration. However, in one sector, the ride-hailing sector, the Trump administration, in its attempt to quash worker rights, has accidentally created a

window of opportunity to grow the ranks of organized labor in New York State by over 100,000. This is an enormous chance for New York State to lead once again. Simply put, it would represent the largest gains to organized labor in the better part of a century. And New York State must act on it.

In May, the Trump National Labor Relations Board ruled that Uber drivers are not eligible under the National Labor Relations Act. This means ride-hail drivers cannot organize in a union under federal law. The ruling left open the possibility for states to fill in the void with these workers. Therefore, we can create a path for 120,000 drivers to join the ranks of the New York State Labor Movement. And we can finally offer a comprehensive response to all the “right to work for less” legislation around the country. We in New York State can be the game changer which will allow workers to organize in a real and meaningful way. This is a chance for New York to live up to its pro-union reputation.

While an AB-5 like bill may be the answer for some sectors, for New York’s ride-hail drivers under the Trump NLRB it would be a purgatory. Re-classifying gig workers as employees using an AB-5-like law at the state level cannot overturn the federal government’s conclusion. Instead it would place the workers in a strange legal purgatory where they may have some employment rights, but they appear to have no right to organize, because federal labor law supersedes state and the classification challenges would continue to stretch on for years.

Even if the NLRB had not ruled this way, the passage of an AB5 like bill would not fix the hurdles that are harming unionization efforts across the country. Drivers would be subjected to the same oppression and bad laws that keep millions and millions of retail workers, factory workers and delivery workers from forming unions. Don’t put us in purgatory, give us the right to collective bargaining. Let us unionize. What drivers really need is collective bargaining. As Harvard Law professors Sharon Block and Benjamin Sachs wrote in a recent article for the Washington Post about AB-5, *“the new law fails to offer gig workers one of the most important employment rights of all: the right to form a union. As important as minimum wage and overtime pay are, they are minimum protections that fall far short of ensuring that workers earn what they need; only a union and a collective bargaining agreement enable workers to demand and secure anything beyond these minimum standards. But even more important, a substantial body of economic research confirms that basic workplace protections are adequately enforced only when there’s a union on the scene.”*

In addition, in New York, drivers could gain little and lose a great deal by such a designation. App company defiance and court battles would be likely to stretch on for years before things change for workers. The app companies have poured millions into fighting AB5 in California and stated their intention to contest it every step of the way. Classification cases have been in the courts for years, like the Dynamex case that led to AB5. That case started with a driver lawsuit 15 years ago, AB5 went into effect a month ago and still California drivers lack protections like a minimum wage. Driver classification fights have already stretched on for many years here in New York as well without producing any gains for the broader driver workforce. Meanwhile, our drivers could face an immediate loss of benefits we spent years fighting for, benefits like free mental health counseling that is currently saving lives. It would also put in jeopardy the higher minimum wage

we secured (\$27.86 per hour) and the power drivers have accumulated. Power that the drivers used to fight for and receive a raise of \$10,000 per year. Power drivers used to get in-app tipping. Power drivers used to stage the largest gig worker protest ever in New York City in September, when over 6,000 drivers protested Uber under the banner of IDG.

We have plans to move aggressively to organize 100,000 plus workers in the FHV industry. When we started the Independent Drivers Guild, we had two main goals. The first was to organize drivers under one industry-wide organization that had enough power to move regulators and legislators to enact immediate and desperately needed change. Our other goal was to build an organizing model for 21st century workers, collecting data, listening to drivers and developing a path forward to formally unionizing drivers into the labor movement. Some may not have agreed with our tactics or our strategy but it is fair to say that after successfully campaigning for the nation's first minimum pay rates, in-app tipping, suitable bathrooms at airports, and an accumulation of an 80,000 driver outreach/database system, we have succeeded in these goals. It has been nearly four years since we started and we've learned a lot and developed as an organization. We have developed a top-notch education offering for drivers, partnered with the Black Car Fund to enhance and assist with outreach of benefits, and accumulated thousands of donations directly from for-hire drivers. This is already helping our drivers live better, healthier lives.

Our biggest problem is that app companies can still upend the livelihoods of workers with sudden changes in terms. New York's drivers make significant investments to become ride-hail drivers, many going into deep debt and signing on to multi-year loans. However, the app companies continue to dramatically change the terms of drivers' working conditions whenever they want. This means that even when we win new laws and regulations, the apps can turn on a dime to get around the protections we have won and manipulate access to the app to line their own pockets. Innocent drivers who invested their savings in this industry, who signed loan contracts, can be fired from the apps without due process. A union with collective bargaining rights is the only way to stop the exploitation.

We spent years fighting for the protection of a minimum pay rate that includes compensation for payroll tax and expenses, but in their relentless pursuit of profits, the apps are gaming the system and have cut off access to the apps in order to avoid paying the wage and pad their bottom line. Uber and Lyft have dramatically changed the most basic aspects of the livelihoods of more than 80,000 New York City drivers, turning these families lives upside down.

I'll give you an example. Tina Raveneau of Brooklyn is a single mom. She quit her retail job over two years ago to begin driving for Lyft so she could have the flexibility she needed to care for her young son. For over two years she has driven primarily for Lyft, turning the app on after dropping her son at school in the morning, and logging off when it was time to pick him up in the afternoon. But suddenly this summer, Lyft began blocking her from the app on Mondays through Thursdays for all but one early morning shift 5 am - 9am, the exact time that she is busy getting her son fed and off to school in the mornings. All of a sudden, Tina's livelihood was pulled out from under her.

The app companies can and do change terms of driver contracts whenever they want, slashing pay, increasing app company commissions, and taking away critical app features. And they will do it again and again, forever and ever as long as drivers' do not have collective bargaining.

The only way to stop them is to achieve a collective or sectoral bargaining agreement that prohibits changes in terms without bargaining. An agreement that prohibits them from firing drivers without cause and manipulating access to the app to favor some drivers over others. Let's give our drivers these protections- they've earned them.

Thousands of New Yorkers quit their jobs and invested in becoming ride-hail drivers for the flexibility it gave them, for the opportunity to own their means of production, and set their own schedules. Apps are trying to scare drivers into thinking they can't have protections AND flexibility. We believe New York can prove to the world we can have worker protections and flexibility, but the only way to get there is through a union with collective bargaining power.

We applaud your efforts, the Governor's, and the New York State AFL-CIO's efforts to help New York State workers unionize with collective and sectoral bargaining agreements. We will work and support them in building a more robust labor movement that includes more workers and an easier path to representation and collective bargaining rights. Minimum protections are not enough. We are proud to stand with the New York State AFL-CIO in building a 21st century model of organizing and building a better future for the 21st century model. IDG agrees with the AFL-CIO that the most important right of workers is a right to organize, and we urge legislation that provides drivers a path towards unionization and collective bargaining rights. Only by empowering workers to forge their own agenda can we truly ensure that workers are treated fairly.

It's time for New York to lead again. Thank you.