

# SERVICE DENIED:

## RESPONDING TO TAXICAB DISCRIMINATION IN THE DISTRICT OF COLUMBIA



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Executive Summary

The District is plagued by blatant and widespread race discrimination by taxicab companies and their drivers. Each year, thousands of minority residents and visitors are unable to hail a taxicab in the District of Columbia because of the color of their skin or because they want to go to a predominantly African-American neighborhood. It is clear that despite the egregious nature of this problem, the District of Columbia's sporadic efforts over the years to address it have been ineffective and wholly inadequate. This report by the Equal Rights Center, a not-for-profit advocacy organization that works to promote equal opportunity in housing, public accommodations, and employment, reviews the scope of the taxicab discrimination and concludes that a concerted effort encompassing expanded legal protections, more vigorous enforcement, and civil rights education is essential to assure basic civil rights.

The Reality of Taxicab Discrimination in the District

- Undercover tests conducted by civil rights advocacy organizations in 1989, 1993, and 1999, revealed widespread discrimination based on race and place of residence in taxicab service in the District of Columbia.
- The results of these tests are confirmed on a daily basis by thousands of District of Columbia residents and visitors.

Federal and District of Columbia Law Prohibit Taxicab Discrimination

- Federal and District of Columbia law prohibit discrimination by taxicab drivers and taxicab companies on the basis of race and place of residence.
- Federal law in the District of Columbia holds taxicab companies legally responsible for the discriminatory actions of their drivers.
- Enforcement of civil rights laws through private litigation is part of the solution, but government agencies need to play an active role as well.

The Critical Role of D.C. Government Agencies in Combating Discrimination

- The District of Columbia Taxicab Commission, the D.C. Office of Human Rights, and the D.C. Metropolitan Police Department are each responsible for regulating the city's taxicab industry. To date, these bodies have not taken sufficiently aggressive action to attack taxicab discrimination.

The District Should Take the Following Seven Steps:

- First: The City Council of the District of Columbia should enact legislation that affirms that owners of taxicab companies in the District are liable for unlawful discrimination committed by their drivers and that the D.C. Taxicab Commission, Office of Human Rights, and Metropolitan Police Department have the legal authority and responsibility to hold taxicab companies liable, in addition to drivers.
- Second: The D.C. Taxicab Commission should amend its regulations to hold owners of taxicab companies liable for prohibited discrimination by their drivers and should increase the monetary fines and non-monetary sanctions imposed on taxicab companies and drivers.
- Third: The Taxicab Commission should receive funding to hire and train hack inspectors to identify drivers who violate civil rights laws and prosecute charges against drivers and owners of taxicab companies.
- Fourth: The Taxicab Commission should ensure that discrimination complaints filed by hack inspectors and private individuals are investigated, prosecuted, and resolved in a timely manner; find individual taxicab drivers and companies liable for discrimination; and levy monetary and non-monetary sanctions to the maximum extent possible.
- Fifth: The Office of Human Rights should be directed to conduct testing of the taxicab industry and to prosecute discriminatory drivers and companies to the maximum extent permissible under District law.
- Sixth: The Metropolitan Police Department should conduct sting operations to identify drivers who discriminate; issue citations to both individual drivers and taxicab companies; and report results to the Taxicab Commission and the media.
- Seventh: The mandatory training for individuals applying to receive a hacker's license in the District of Columbia should be revised to include four hours on diversity training and federal and local civil rights laws.

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*Introduction*

The District of Columbia is plagued by blatant, widespread, and persistent race discrimination by taxicab companies and their drivers. Each year, thousands of minority residents and visitors are unable to hail a taxicab in the District of Columbia because of the color of their skin or because they want to go to a predominantly African-American neighborhood. It is clear that despite the egregious nature of this problem, the District of Columbia's sporadic efforts over the years to address it have been ineffective and wholly inadequate.

This report reviews the scope of the problem and the advocacy efforts that have been made to date to address it. It concludes that a concerted effort encompassing expanded legal protections, more vigorous enforcement, and civil rights education is essential if the basic civil rights of minority taxi patrons are to be assured.

This report was prepared for the Equal Rights Center by the Washington Lawyers' Committee for Civil Rights & Urban Affairs and the law firm of Hogan & Hartson. The Equal Rights Center is a private, not-for-profit civil rights organization dedicated to ensuring equal opportunity for all in the Greater D.C. Metropolitan Area. The Equal Rights Center was founded in 1999 by a group of interdenominational clergy and community leaders to provide a multi-faceted approach to civil rights issues. The Equal Rights Center is one of the first comprehensive civil rights centers dedicated to furthering fair housing, fair employment, disability, and public accommodation civil rights issues in the nation. The Equal Rights Center provides counseling, education, testing, training, research, and advocacy services.

## *Section I: The Reality of Taxicab Discrimination in the District*

More than a decade ago, in response to numerous accounts that African Americans in the District were being denied taxicab service on the basis of their race,<sup>1</sup> the Washington Lawyers' Committee for Civil Rights & Urban Affairs initiated a study of taxicab discrimination.<sup>2</sup> In the study, pairs of one white and one black "tester" attempted to hail cabs while standing near each other in pre-selected locations in downtown D.C. The testers were positioned so that the African American would be seen by passing cabs before the white. When taxicabs did stop, one tester asked to be taken to a predominantly black neighborhood in Southeast and the other tester asked to be taken to a predominantly white neighborhood in Northwest.<sup>3</sup> Approximately 300 tests were conducted. The results showed that African Americans were almost seven times more likely to be passed up by taxicab drivers than whites (African-American prospective passengers were passed by 20% of the time versus 3% for white prospective passengers) and that it took longer for a taxicab driver to stop to consider providing service to an African American than to a white.<sup>4</sup> The study also found that drivers were more likely to refuse service to passengers of all races who sought service to destinations in Southeast, compared to destinations in parts of the city with smaller African-American populations.<sup>5</sup>

More recent testing and studies indicate that the discrimination reported in the 1989 study continues unchecked. A 1993 testing study conducted by the Fair Employment Council of Greater Washington showed that in the approximately 60 tests conducted of 45 different taxicab companies in the District, prospective African-American passengers were passed by for white customers 36% of the time.<sup>6</sup> In August and December 1999, The Equal Rights Center performed a study of taxicab service in the District, which showed stark discrimination in the provision of taxicab dispatch service. The study showed that an individual requesting dispatch service from Diamond Cab Company of Washington, D.C. who was calling from an address in Northwest

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<sup>1</sup> The authors of this report recognize that taxicab discrimination in the District also affects non-African Americans; however, the studies and litigation conducted to date have targeted discrimination against African Americans and residents of predominantly African-American neighborhoods. While this report is accordingly focused on the experience of African Americans in the District, the authors firmly believe that the measures recommended in Section IV, if adopted by the District, would benefit all prospective taxicab passengers, regardless of race, ethnicity, or place of residence.

<sup>2</sup> See Stanley E. Ridley, James A. Bayton and Janice Hamilton Outtz, Washington Lawyers' Committee for Civil Rights Under the Law, Taxi Service in the District of Columbia: Is it Influenced by the Patrons' Race and Destination? (June 1989).

<sup>3</sup> See id. at 29.

<sup>4</sup> See id. at 17.

<sup>5</sup> See id. at 21-28.

<sup>6</sup> See, Fair Employment Council of Greater Washington, Inc., Discrimination in Taxi Services: Summary of the FEC's Summer 1993 Taxi Testing (1994).

D.C. was 14 times more likely to receive service than a caller with an address in Southeast D.C.<sup>7</sup> In February and March 2001, Washington's Metropolitan Police Department conducted "sting operations" using undercover, plain-clothed police officers to identify taxicab drivers who failed to stop for an African-American officer, passed an African-American officer but picked-up a white officer, or refused to take officers to the Police Department's 7<sup>th</sup> District headquarters on Alabama Avenue, in Southeast, D.C. Cab drivers were issued \$250 citations for violating D.C. Municipal Regulations prohibiting drivers from failing to haul prospective passengers.<sup>8</sup> Over the course of three sting operations, a total of ninety-four citations were issued by police officers, for a total of \$23,500 in civil fines.

Countless anecdotes support the results of these studies and sting operations.<sup>9</sup> African-American taxicab customers recount being forced to wait for hours for a cab requested from a Dispatch company<sup>10</sup> and being ordered to leave a taxicab upon informing the driver of a Southeast, D.C. destination or upon the driver spotting a white, prospective rider.<sup>11</sup> These repeated incidents of racial discrimination in the taxicab industry cross socio-economic, gender,

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<sup>7</sup> According to statistics collected by Dr. Janice Hamilton Outtz, an expert for plaintiffs in the lawsuit accusing Diamond Cab Company of D.C. of discriminating in its dispatch service, the Northwest quadrant of Washington, D.C. is 38.2% black and the Southeast quadrant of D.C. is 96.3% black. See Mitchell et al. v. DCX, Inc. d/b/a/ Diamond Cab Company of D.C. et al., 2003 WL 21694565, at \*1 (D.D.C.).

<sup>8</sup> The schedule of civil fines for infractions of D.C. taxicab regulations is found in Section 825.1 of Title 31 of the D.C. Municipal Regulations, which assesses a civil fine of \$250 for failure to haul. See, D.C. MUN. REGS. tit. 31, § 825.1 (2003). The same section provides that the civil fines set forth are to be doubled upon a second violation of the same infraction and doubled again for any subsequent violation or violations of the same infraction. See id.

<sup>9</sup> Recently, a number of civil rights cases alleging refusal of service based on race have been filed by the Washington Lawyers' Committee and co-counsel from area law firms. See Bolden et al. v. J&R Incorporated, Inc. et al. (D.D.C. 1:99CV01255, filed May 24, 1999, decided in favor of the plaintiffs, June 21, 2000); Mitchell et al. v. DCX, Inc. d/b/a/ Diamond Cab Company of D.C. et al. (D.D.C. 1:00CV01317, filed June 7, 2000, partial summary judgment for plaintiffs granted July 22, 2003, 2003 WL 21694565 (D.D.C.)); Greene v. Amritsar Auto Services Co, LLC., et al.(D.D.C. 1:01CV00630, filed March 22, 2001, Consent Order for injunctive and monetary relief entered December 9, 2002); Snead v. District Cab Co., et al. (D.D.C. 1:01CV00632, filed March 22, 2001, Consent Order and Settlement Agreement entered December 5, 2001); Jones v. Standard Cab Co., et al., (D.D.C. 1:01CV02568, filed December 12, 2001, Consent Order and Settlement Agreement entered July 3, 2002).

<sup>10</sup> Viola Bowen, a named plaintiff in Mitchell v. Diamond Cab Co., alleges that she waited in vain for 90 minutes for a taxi to take her from her home on Alabama Avenue, S.E. to a downtown department store. See, Mitchell v. DCX, Inc., 2003 WL 21694565, at \*2.

<sup>11</sup> Juanita Coates Jones, the plaintiff in Jones v. Standard Cab Co., alleges that she was directed to exit a cab in Dupont Circle, after hailing a taxicab in Georgetown and telling the driver that she lived in Northeast, D.C., so that the driver could pick up a white woman waiting a block away. Selethia Snead, the plaintiff in Snead v. District Cab Co., alleges that she was ordered to get out of a cab near Georgetown University Hospital so that the driver could pick up five white individuals who were waiting nearby. See Bill Miller, D.C. Cabbies, Companies Face Discrimination Suits, The Washington Post, Mar. 23, 2001, at B1, available at 2001 WL 2553121.

and residential lines, affecting African-American men and women, professionals and non-professionals, and residents of Northwest, D.C. and Southeast, alike.<sup>12</sup>

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<sup>12</sup> See Bill Miller, D.C. Cabbies, Companies Face Discrimination Suits, The Washington Post, Mar. 23, 2001, at B1, available at 2001 WL 2553121. Bryan Greene, a chief policy adviser at the U.S. Department of Housing and Urban Development who is African American, alleged that he was the victim of blatant race discrimination when a driver looked at him and drove off rather than pick him up from a hotel in downtown D.C. to take him to his home in Northwest, D.C.

## *Section II: Federal and District of Columbia Law Prohibit Taxicab Discrimination*

Federal and District of Columbia law prohibit unequal treatment of taxicab riders on the basis of race and place of residence. At the federal level, purposeful race and national origin-based discrimination in the provision of taxi service is prohibited under the Civil Rights Act of 1866. See 42 U.S.C. § 1981.<sup>13</sup> Discrimination by taxicab drivers also violates at least three provisions of the District of Columbia Human Rights Act (“DCHRA”).<sup>14</sup> First, the DCHRA provides that it shall be an unlawful discriminatory practice to “wholly or partially for a discriminatory reason based on the race, color ... national origin ... personal appearance ... place of residence or business of any individual” ... (1) “[t]o deny, directly or indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations.”<sup>15</sup> Second, the DCHRA includes a general statement that it is the intent of the Council of the District of Columbia to secure an end to discrimination for any reason other than individual merit.<sup>16</sup> Finally, the DCHRA grants every individual an equal opportunity to “participate fully in the economic, cultural and intellectual life of the District and to have an equal opportunity to participate in all aspects of life,” including in places of public accommodation.<sup>17</sup>

In addition, Title 31 of the District of Columbia Municipal Regulations, which governs taxicabs, provides that “[n]o taxicab operator shall refuse to transport a person while holding his or her taxicab for hire, unless: a. previously engaged; b. unable or forbidden by the provisions of this title to do so; c. the operator has reason to believe the person is engaged in a violation of law; or d. the operator has cause to fear injury to his or her person, property or taxicab.”<sup>18</sup> Individuals found to have failed to haul someone for a

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<sup>13</sup> 42 U.S.C. § 1981(a) provides: “All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts ... as is enjoyed by white citizens ... .” Section 1981 has been found to prohibit discrimination in the provision of taxicab service. See e.g., Mitchell v. DCX, Inc., 2003 WL 21694565, at \* 7 (D.D.C.) (“Section 1981 claims most commonly involve contracts of employment, but § 1981 also prohibits refusal of service based on race.”)

<sup>14</sup> See District of Columbia Human Rights Act, D.C. Code Ann. § 2-1401.02 et seq. (2001) (formerly cited as §§ 1-2502 et seq. (1981)).

<sup>15</sup> Id. § 2-1402.31 (2002) (formerly cited as § 1-2519 (1981)); see also, § 2-1401.02 (22) (2001) (defining “personal appearance” to include “manner or style of dress, and manner or style of personal grooming, including, but not limited to, hair style and beards.”); (24) (defining “place of public accommodation” to include “all public conveyances operated on land or water or in the air”) (formerly cited as § 1-2502 (1981)).

<sup>16</sup> Id. § 2-1401.01 (2001) (formerly cited as § 1- 2501 (1981)).

<sup>17</sup> Id. § 2-1402.01 (2001) (formerly cited as § 1-2511 (1981)).

<sup>18</sup> See D.C. MUN. REGS. tit. 31, § 819.4-.5 (1987), available at <http://dctaxi.dc.gov/info/title31.shtm>.

discriminatory reason may be issued a citation with an accompanying \$250 civil fine. See D.C. MUN. REGS. tit. 31, § 825.1 et seq.

In recent years, victims of taxicab discrimination have filed individual lawsuits in federal court against District taxicab owners and drivers asserting violations of both federal and District law.<sup>19</sup> Significantly, the federal District Court for the District of Columbia has consistently held that taxicab companies are prevented, as a matter of law, from trying to avoid liability for the discriminatory actions of drivers of their cabs: if an individual cab driver is found to have discriminated, then the taxicab company whose car that driver operates is legally responsible in addition to the individual driver. See, e.g., Floyd-Mayers v. American Cab Co., 732 F. Supp. 243, 245 (D.D.C. 1990) (following Rhone v. Try Me Cab Co., 65 F.2d 834 (D.C. Cir. 1933)); Bolden v. J & R Inc., 2001 WL 1910561 at \*2-3 (D.D.C.); Greene v. Amritsar, 206 F. Supp.2d 4, 7-9 (D.D.C. 2002); Mitchell v. DCX, Inc., 2003 WL 21694565 at \*6 (D.D.C.).

While the limited number of civil rights cases litigated in District of Columbia courts have resulted in jury verdicts for plaintiffs and positive settlements, litigation is only part of the solution; more needs to be done. In Floyd-Mayers, Defendant American settled the case, paid \$47,500 in damages to the plaintiffs, agreed to create an internal review committee to handle discrimination complaints, expanded the training program for its drivers, and posted signs in all of its taxicabs informing passengers of their right to complain to the DCTC.<sup>20</sup> A similarly favorable result was reached in Bolden v. Presidential Cab Co., where the jury returned a verdict in favor of the two plaintiffs, awarding each of them \$6,000 in compensatory damages and \$54,000 in punitive damages.<sup>21</sup> In Jones v. Standard Cab Co., Ms. Jones' case was settled for \$9,000 from the Defendant Standard Cab Co., \$1,000 from the individual driver, and an additional \$5,000 from Standard Cab Co. to provide diversity and civil rights training to Standard's drivers and employees.<sup>22</sup> The settlement reached in Greene v. Amritsar requires Amritsar, which owns "Your Way" and "Atlantic" taxicabs, to require its new and

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<sup>19</sup> See supra, note 8.

<sup>20</sup> See Consent Order and Settlement Agreement, Floyd-Mayers v. American Cab Co., No. 89-1777(CRR) (D.D.C. filed Nov. 1, 1990). See also Keith Harriston, 3 Cab Firms to Monitor for Bias; Suit Over Shunning of Blacks Settled, The Washington Post, Nov. 3, 1990, at B1, available at 1990 WL 2100387. In this article, Harriston describes the settlement agreement for American, Empire and D.C. National Cab companies. The settlement mandated that the companies investigate and keep records of both formal and informal complaints from people who allege discrimination on the part of drivers who use the companies' cabs. The agreement further required that when the companies find that service was denied, at least partly based on race of the customer, they suspend the driver's insurance and driving privileges for a week for the first offense, 12 days for the second, and permanently for the third. Cabs owned by the companies were also required to display decals showing phone numbers to call to file complaints.

<sup>21</sup> See Bolden et al. v. J&R Incorporated, Inc. et al. (D.D.C. 1:99CV01255, filed May 24, 1999, decided June 21, 2000).

<sup>22</sup> See Jones v. Standard Cab Co., et al., [D.D.C. 1:01CV02568, filed December 12, 2001, Consent Order and Settlement Agreement entered July 3, 2002].

existing drivers to sign an employment contract acknowledging that the company will terminate drivers who admit to discrimination or are found guilty of discrimination by Amritsar; earmarks \$2,000 of the total monetary settlement from Amritsar to be dedicated to advertisements that say that Amritsar's drivers do not discriminate on the basis of race, ethnicity, national origin, or destination of a passenger and ask Amritsar passengers who feel they have been discriminated against to record the cab number and contact the company; and provides that, for a five-year period, Amritsar drivers will post a notice in their taxicabs saying that the company requires its drivers to carry passengers to any destination in D.C. regardless of race, ethnicity, or national origin and encouraging passengers who feel they have been discriminated against to record the cab number and contact the company.<sup>23</sup> And in Mitchell v. Diamond Cab Co., the District Court granted summary judgment for the plaintiffs on their claims under the D.C. Human Rights Act, finding that Diamond Company of D.C.'s dispatch service discriminates on the basis of race and place of residence in violation of the D.C. Human Rights Act.<sup>24</sup>

These successful legal challenges to individual refusals of taxicab service and the subsequent, creative settlement arrangements have provided significant redress to individual victims of discrimination and have compelled changes in the policies and practices of the particular companies and drivers sued. However, in spite of the successes of cases like Floyd-Mayers, Jones, Greene, Mitchell, Snead, and Bolden, the sheer number of taxicab companies and drivers in the District of Columbia,<sup>25</sup> combined with the systemic nature of taxicab discrimination in D.C., present practical limitations to the overall effectiveness of piecemeal litigation and demand additional efforts to eradicate taxicab discrimination in the District.

One of the practical limitations of litigation-based reform is that taxicab companies frequently refuse to enforce measures against individual taxicab drivers, on the grounds that those drivers are independent contractors and not employees. While the law holds companies liable for the discriminatory actions of their drivers, owners of taxicab companies claim that they are incapable of requiring drivers to attend education

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<sup>23</sup> Greene v. Amritsar Auto Services Co, LLC., et al.(D.D.C. 1:01CV00630, filed March 22, 2001, Consent Order for injunctive and monetary relief entered December 9, 2002).

<sup>24</sup> Mitchell v. DCX, Inc., 2003 WL 21694565, at \* 7 (D.D.C.). See also, Alicia Upano, Cab Company Slammed for Discrimination, Legal Times, Sept. 1, 2003, at 13.

<sup>25</sup> The District currently has 6,200 licensed taxicabs and about 8,000 licensed taxicab drivers. See Serge F. Kovaleski and Sewell Chan, Williams Seeks Taxi Overhaul: Meters, Limiting Cabs Considered, The Washington Post, July 6, 2001, at A1, available at 2001 WL 23178873. According to the District of Columbia Taxicab Commission's web page, there are 74 taxicab companies operating in the District of Columbia; 9 companies providing dispatch service; and 5 companies that offer insurance to these taxicab companies. See District of Columbia Taxicab Commission: Taxi Company/Fleet List page available at <http://dctaxi.dc.gov/info/compant.shtml>; Taxicab Dispatch Services page available at <http://dctaxi.dc.gov/info/dispatch.shtml>; Insurance Information page available at <http://dctaxi.dc.gov/info/insurance.shtml>.

and training courses. The solution to this problem is to have civil rights professionals provide anti-discrimination training as part of the mandatory courses that drivers must complete in order to be licensed by the District of Columbia Taxicab Commission.

### *Section III: The Role of D.C. Government Agencies in Combating Discrimination*

Any substantial change in the levels of taxicab discrimination will require the relevant District of Columbia agencies to obtain the resources and exercise the will to enforce the existing laws prohibiting discrimination in the taxicab industry. The District of Columbia Taxicab Commission, the District of Columbia Office of Human Rights, and the D.C. Metropolitan Police Department each bear responsibility for countering taxicab discrimination in the District; however, to date, these bodies have not taken sufficiently aggressive and continuous action to attack taxicab discrimination. Part of the problem is that these government agencies lack sufficient funds and human resources. It is also fair to say that the District government as a whole, despite the current Administration's stated interest in improving taxicab service, has failed to define and charge these agencies with an overall, coordinated plan for ending taxicab discrimination.<sup>26</sup> Both of these contributing factors can and should be remedied.

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<sup>26</sup> See Kovalski and Chan, *supra*, note 25 (describing Mayor Anthony A. Williams's desire to improve taxicab service in the District as part of his economic development plan for the City).

A. The District of Columbia Taxicab Commission (“DCTC”)

The District of Columbia Taxicab Commission (“DCTC” or “Taxicab Commission”)<sup>27</sup> – the D.C. governmental agency with primary responsibility for regulating and monitoring the City’s taxicab industry – has inexcusably neglected its responsibilities in the civil rights area. The DCTC has failed to act affirmatively to identify discriminating actors in the taxicab industry; has failed to investigate promptly and thoroughly taxicab discrimination complaints brought before it by private individuals; has failed to hold taxicab owners liable for discrimination of their drivers; and has failed to establish an effective schedule of civil fines and penalties for discriminatory taxicab drivers and related taxicab companies.

1. Hack Inspectors Must Actively Monitor Discrimination.

Hack inspectors are District employees empowered to investigate violations of DCTC regulations, prosecute formal charges of violations, and assist with hearings on complaints against drivers.<sup>28</sup> These employees are required to monitor the District’s large number of taxicabs for inspection and licensing violations in addition to civil rights violations. At present, the small number of hack inspectors employed by the District is inadequate to cover this broad mission. The Taxicab Commission needs to be appropriated sufficient funding to hire additional hack inspectors who can focus on actively identifying and prosecuting drivers who refuse to haul prospective passengers in violation of District law. These hack inspectors should be trained by civil rights organizations with experience providing anti-discrimination training to companies in the business of providing public accommodations. Drivers found to have violated District anti-discrimination laws should be charged before the Taxicab Commission by a hack inspector and fined and penalized strictly in accordance with the appropriate regulations. Hack inspectors should also bring owners of

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<sup>27</sup> The District of Columbia City Council established the District of Columbia Taxicab Commission in 1986, under the authority of the District of Columbia Taxicab Commission Establishment Act of 1985 (the “1985 Act”), to facilitate the regulation and administration of taxicabs operating within the City. See D.C. Code Sections 50-301 through 40-322. The Taxicab Commission is comprised of nine commissioners appointed by the Mayor, one of whom is designated as the Chairperson of the Commission. According to the 1985 Act, the District of Columbia Taxicab Commission was designated as a subordinate agency within the executive branch of the District government with exclusive authority for intrastate regulation of the taxicab industry. The 1985 Act transferred jurisdiction over taxicabs from the Public Service Commission following a determination by the Council that regulation of the industry under a complicated and multi-faceted statutory scheme was inefficient and against the public interest. In short, the DCTC was designed to replace a poor regulatory system that had resulted in a collection of uncoordinated standards for the taxicab industry, with an independent agency having the consolidated regulatory authority to license, authorize, and monitor taxicabs operating within the District.

<sup>28</sup> See D.C. MUN. REGS. tit. 31, §826.14 (2001) (“law enforcement personnel (including civilian hack inspectors, may file a complaint for any violation of 822.2 and 822.3) [the only, minor problem is that 822.2 and 822.3 are conspicuously absent from this title!].

taxicab companies whose drivers are found to have discriminated before the Taxicab Commission and charge them with violation of District law. Like the individual drivers, the owners should be prosecuted and penalized to the maximum extent possible under District law.

2. The Complaint Process Needs to be Reformed.

The administrative process currently available to private individuals electing to file taxicab discrimination complaints with the Taxicab Commission is woefully inadequate and completely ineffective. There are four main problems with the existing administrative process for filing complaints with the DCTC: procedures that place undue burdens on those who file complaints; the failure of the Panel on Adjudication to issue decisions in a timely manner; the failure of the DCTC to hold taxicab owners liable for the discriminatory acts of their drivers; and the ineffective level of the fines and penalties currently in place.

As set forth in Chapter 7 of Title 31 of the D.C. Municipal Regulations, private individuals wishing to present a taxicab discrimination complaint against a District taxicab driver for consideration by the DCTC must file a written, signed complaint that includes the complainant's address and telephone number, within thirty days of the allegedly discriminatory act.<sup>29</sup> Upon receiving such a complaint, the DCTC is charged with notifying the charged taxicab driver of the claims that have been made against him or her.<sup>30</sup> The charged driver or owner has ten days after notification in which to file an answer with the Taxicab Commission.<sup>31</sup> The Taxicab Commission may resolve a complaint on the basis of the allegations in the complaint and the responses in the answer, or may refer the matter to the Panel on Adjudication for an evidentiary hearing.<sup>32</sup> The Panel on Adjudication is directed to hold an adversarial hearing within ninety days of being referred a complaint.<sup>33</sup>

Among the problems with this process is that it treats a complainant like a private litigant in a civil case, requiring him or her to present a case before the Panel on Adjudication, which can be time consuming and intimidating. In nearly every other context in which an individual violates municipal laws or regulations, such as the health code, the building code and traffic or parking violations, the city plays an active role in investigating complaints and prosecuting violations.

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<sup>29</sup> See D.C. MUN. REGS. tit. 31, §701.3 - 701.4 (2001).

<sup>30</sup> Id. § 701.6.

<sup>31</sup> Id. §§701.5-7.

<sup>32</sup> Id. § 701.11.

<sup>33</sup> Id. § 702.1.

Discrimination against taxicab passengers should be no different. Complaints should be investigated in the first instance by hack inspectors. If the complaint is found to be meritorious, the hack inspector should issue a citation in the same manner that a building, health inspector or parking enforcement official would. Of course, those cited would have the right to deny the violation and request a hearing on the matter, at which the complainant could appear if she or he so chose.

Furthermore, complaints that are filed and prosecuted must be acted upon promptly. In the discrimination complaints filed with the DCTC of which the authors are aware, the complaint process has been appallingly inadequate. Selethia Snead, for example, received absolutely no response to a written complaint she filed with the DCTC, even after leaving several follow-up phone messages.<sup>34</sup> Bryan Greene filed a complaint with the Taxicab Commission on May 17, 2001, in which he described blatant race discrimination by a Highland Cab driver in violation of D.C. Municipal Regulations. The complaint described how on the evening of May 5, 2001, the driver of a Highland Cab pulled over in response to a white friend's attempts to hail a cab from the curb of a residential street in Georgetown; agreed to take the fare to Adams Morgan; and then pulled off once he realized that it was Mr. Greene, and not his white friend, who needed taxicab service.<sup>35</sup> On July 25, 2001, Mr. Greene and his attorneys presented evidence before a hearing examiner at the Taxicab Commission. As of the release of this report, Mr. Greene has yet to receive a decision or any further communication of any nature from the Taxicab Commission. The DCTC needs to be appropriated sufficient funds and given sufficient direction from the D.C. Council and the Mayor's Office to ensure that discrimination complaints filed at the DCTC are timely and effectively investigated, prosecuted, and resolved.

3. Taxicab Owners Should be Held Liable in Addition to Drivers.

The relevant District of Columbia Municipal Regulations need to be revised by the D.C. Council to hold taxicab companies liable for the discriminatory actions of their individual drivers. Federal courts in the District have made it clear that taxicab companies may not evade liability for discrimination by individual drivers. *See* discussion *supra* in Section II. District regulations need to be amended to make it clear that District regulatory law mirrors federal civil rights law on this issue. At present, the only way to hold taxicab companies liable for the discriminatory actions of their drivers is to file a complaint in court. Once the regulations are revised, victims of discrimination would have the additional option of filing a complaint with the Taxicab Commission. The DCTC must then actively enforce these revised regulations to

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<sup>34</sup> [See Complaint, \*Snead v. District Cab Co., Inc.\* \(D.D.C. 1:01CV00632, filed March 22, 2001\).](#)

<sup>35</sup> [See Complaint, \*Greene v. Highland Cab Association\*, filed with DCTC, May 17, 2001.](#)

hold owners liable and impose monetary fines and civil penalties on owners, as well as drivers.

4. Applicable Fines and Sanctions Must be Increased.

If the Panel on Adjudication finds an individual taxicab driver guilty of discrimination, he or she can presently be fined \$250 for the first offense, \$500 for a second violation of the same section, and \$1,000 for any subsequent, similar offense.<sup>36</sup> The Panel on Adjudication also has the discretion to suspend or revoke the license of a taxicab driver for violation of any of the Taxicab Commission's rules.<sup>37</sup> These penalties are inadequate.

First, the Taxicab Commission needs to enact regulations to increase the level of fines levied against individual drivers who engage in civil rights violations to a level that will effectively deter drivers from discriminating again. Second, the Taxicab Commission needs to enact regulations imposing similarly effective monetary and non-monetary sanctions against owners of taxicab companies whose drivers have engaged in discrimination. In addition to enacting effective monetary fines against owners of taxicab companies, the Taxicab Commission should also enact regulations making it clear that owners of taxicab companies may lose their right to operate a taxicab company in the District of Columbia because of discrimination by their drivers.<sup>38</sup> Third, the current regulations should be revised to give the Taxicab Commission the authority to grant private citizens monetary damages and declaratory relief, which presently can only be attained through litigation under federal or District statutory and common law.<sup>39</sup> And fourth, the DCTC should be encouraged to enforce these monetary fines and penalties to the maximum extent possible under the regulations.

In order to provide citizens an effective venue for challenging taxicab discrimination, the DCTC must completely overhaul the current complaint process; must hire additional hack inspectors to identify and prosecute discriminatory drivers; must revise its regulations to hold both individual drivers and taxicab companies liable for refusals to haul; and must increase the applicable monetary fines and civil penalties to levels that will deter future violations.

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<sup>36</sup> [See D.C. MUN. REGS. tit. 31 at §§ 825.4 & 703.1.](#)

<sup>37</sup> [See § 703.2.](#)

<sup>38</sup> [See e.g., D.C. MUN. REGS. tit. 31 at § 509.3](#) (“The Commission may recommend to the appropriate government agency the suspension or revocation of any license or privilege to do business in the District of Columbia for failure to comply with Commission rules or sanctions imposed by the Commission”).

<sup>39</sup> [See e.g., \*Floyd-Mayers\*, 732 F. Supp. at 247.](#)

B. The District of Columbia Office of Human Rights ("OHR")

The District of Columbia Office of Human Rights ("OHR") is a second D.C. agency with the power to address taxicab discrimination. The OHR is charged with enforcing the District of Columbia Human Rights Act of 1977 and is empowered to investigate and process complaints of unlawful discrimination in, among other things, places of public accommodation.<sup>40</sup> The OHR also has the authority to conduct its own investigations, studies, and hearings on human rights issues in order to make recommendations for political and legislative action.<sup>41</sup>

As the District's primary civil rights agency, the OHR needs to play a more central role in combating discrimination in the District's taxicab industry. OHR needs to be directed by the D.C. Council and the Mayor's Office to focus on this persistent civil rights issue and do its part in addressing the problem. OHR investigators should be encouraged to conduct testing of the taxicab industry and to prosecute drivers and companies found to have discriminated to the maximum extent permissible under District law.

C. The Metropolitan Police Department ("MPD")

In the spring of 2001, the MPD conducted three sting operations aimed at detecting taxicab drivers who refused to haul based on race and place of residence.<sup>42</sup> Over the course of just three evenings, ninety-four taxicab drivers were pulled over and issued citations for refusal to haul in violation of D.C. Municipal Regulations. Each citation imposed a \$250.00 fine against the individual taxicab driver, but no fines or penalties were imposed on the taxicab companies whose colors and insignia these drivers bear on the side of their taxicabs. The results of these stings were broadcast by local media.<sup>43</sup> The MPD should be encouraged to conduct more frequent, regular sting operations to identify drivers who refuse to haul based on any of the protected categories identified in Section 2-1402.31 of the D.C. Human Rights Act, and the MPD should issue citations to both individual drivers and taxicab companies.<sup>44</sup> The results of these sting operations should be reported to both the Taxicab Commission and the local media, to raise awareness of the problem and increase pressure on drivers and companies to stop discriminating.<sup>45</sup>

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<sup>40</sup> See [About the Office of Human Rights](http://www.ohr.dc.gov/about/index.shtm), available at <http://www.ohr.dc.gov/about/index.shtm>.

<sup>41</sup> See D.C. Code Ann. § 2-1403.01.

<sup>42</sup> See discussion *supra* in Section I.

<sup>43</sup> See Transcript of WTTG March 5, 2001, Report on Taxi Sting.

<sup>44</sup> See discussion *supra* in Section III. A.

<sup>45</sup> DC Code Section 40-1722 requires the MPD to "provide to the DCTC, on an annual basis, a report on the number of citations issued to vehicles for hire."

#### *Section IV: Ways to Eradicate Taxicab Discrimination in the District of Columbia*

The taxicab industry's pattern of pervasive race and residence-based discrimination against African Americans and other minorities in the District of Columbia has proved resistant to pressure. Experience suggests that piecemeal litigation can result in some positive changes – curbing discrimination by particular defendant drivers and taxicab companies and compensating individuals who come forward as plaintiffs. But the large number of companies licensed to operate taxicabs in the District of Columbia makes these incremental improvements an impractical tool to combat the systemic problem. In addition, this report has made clear that the District's laws and regulations prohibiting taxicab discrimination – and the governmental agencies charged with enforcing those laws and regulations – have been largely ineffective in addressing the discrimination that denies African Americans and residents of predominantly African-American neighborhoods their fundamental civil right to equal service and treatment.

A reinvigorated, coordinated, governmental attack on taxicab discrimination is needed. The authors of this report urge the District to take the following seven steps:

First: The City Council of the District of Columbia should enact specific legislation holding taxicab companies liable for the discriminatory acts of their drivers. This legislation should: (1) affirm that owners of taxicab companies in the District are liable for unlawful discrimination committed by the drivers of cabs flying their colors and insignia; and (2) affirm that the D.C. Taxicab Commission, the D.C. Office of Human Rights, and the D.C. Metropolitan Police Department have the legal authority and the legal responsibility to find taxicab companies liable in addition to individual drivers.

Second: The D.C. Taxicab Commission should amend its regulations to penalize effectively both individual drivers who discriminate in violation of District law and owners of taxicab companies whose employees and drivers are found to have engaged in such discrimination. These regulations should: (1) expressly declare that discriminatory practices in the provision of taxicab service are prohibited if based on the protected categories listed in Section 2-1402.31 of the D.C. Human Rights Act; (2) make clear that owners of taxicab companies are liable for prohibited discrimination by their employees and by drivers of taxicabs flying their colors and insignia; (3) increase existing fines and penalties imposed on taxicab drivers found to have engaged in impermissible discrimination; and (4) enact effective fines and penalties to punish owners of taxicab companies liable for impermissible discrimination on behalf of their employees and drivers of taxicabs flying their colors and insignia.

Third: The D.C. Taxicab Commission's complaint system should be reinvigorated and restructured to bring it more in line with other municipal processes. Complaints should be investigated in the first instance by hack inspectors. If the inspector determines that a complaint is meritorious, the DCTC should issue a citation to the driver and the cab company, who would have the right to deny the violation through a hearing process. The Taxicab Commission should enact regulations setting forth the procedural and evidentiary rules governing these hearings, including a requirement that complaints filed with the DCTC be resolved within three months, unless good cause is

shown for an extension to six months; and shall provide that its hearings be recorded and that transcripts of those hearings be made available to the public for a reasonable fee.

Furthermore, the Taxicab Commission should publish advertisements and post prominent signs at taxicab stands, hotels, and other public locations where people tend to hail cabs, stating that taxicab drivers are prohibited from discriminating on the basis of race, national origin, personal appearance, or place of residence or business, providing contact information for the DCTC, and informing members of the public that they have a right to file complaints with the DCTC about discriminatory behavior by taxicab drivers.

Fourth: The Taxicab Commission should receive additional funding to hire additional hack inspectors to enforce the Commission's anti-discrimination regulations and identify drivers who are refusing to haul prospective passengers based on any of the protected categories set forth in Section 2-1402.31 of the D.C. Human Rights Act. These hack inspectors should work with civil rights professionals to conduct testing to monitor District taxicab drivers and dispatch companies. Drivers and employees found by testers to discriminate in violation of District law and regulations should be charged before the DCTC by a hack inspector for a determination of liability and imposition of the appropriate fines and penalties. The hack inspector should also present charges for violation of District law and regulations against the taxicab company whose colors and insignia are on the side of the charged driver's taxicab or who employs the employee charged with discrimination.

Fifth: The D.C. Office of Human Rights should take affirmative steps to advise D.C. residents and visitors of their right to file taxicab discrimination complaints with the OHR; to conduct testing of the taxicab industry; and to prosecute drivers and companies found to have discriminated to the maximum extent permissible under District law. When taxicab discrimination complaints are filed with the OHR, the OHR should enforce federal and local law to hold individual taxicab drivers, the taxicab companies whose colors and insignia these drivers fly, and taxicab dispatch companies, liable for discrimination on the basis of any of the protected categories set forth in Section 2-1402.31 of the D.C. Human Rights Act

Sixth: The Metropolitan Police Department should engage in periodic sting operations to identify drivers who are refusing to haul prospective passengers based on any of the protected categories set forth in Section 2-1402.31 of the D.C. Human Rights Act. The MPD should enforce the applicable regulations and penalties and issue citations, with accompanying monetary fines and civil penalties, against individual taxicab drivers, the taxicab companies whose colors and insignia they represent, and taxicab dispatch companies. The results of the MPD's efforts should be reported to the D.C. Taxicab Commission and publicized in the local media.

Seventh: The mandatory training for individuals applying to receive a hacker's license in the District of Columbia, which is currently conducted by the University of the District of Columbia, should be revised to include a four-hour session on diversity and sensitivity training and federal and local civil rights laws. Civil rights professionals should be contacted for advice on designing and implementing effective training materials and instruction.