

Internet Advocacy ‘Uber’ Alles: What Uber-Fans Accomplished in Boston & What It Means for Urban Democracy & Local Government

By Molly Cohen¹

In a recent article about cities cracking down on airbnb—a website for short-term house and apartment rentals—the *New York Times* argued that young “citizens of start-up nation believe that living on the Web grants them membership in an exalted class to which old laws cannot possibly apply.”² The article goes on, lamenting, this “sort of arrogance takes your breath away.”³ Yet, recent examples have shown that “citizens of start-up nation” can effect real change in local government decisions via internet advocacy. Clashes between innovative start-ups and old-fashioned local ordinances have led young web-savvy citizens to take to the virtual streets, lobbying on twitter and Facebook for the right to use a given service, regardless of applicable laws. When the Massachusetts Division of Standards blocked Uber, an on-demand smartphone and GPS-based cab service, from operating in the state due to its use of unapproved devices, Uber-fans vigorously protested online via tweets, emails, Facebook posts and online petitions. The outcry was so fierce that within 24 hours, Massachusetts’ Governor Deval Patrick addressed the issue on twitter, and the Division of Standards reversed its original decision.

The Uber story presents a fascinating marriage of ages-old community organizing and web-based advocacy. Moreover, it provides an interesting twist to the traditional David and Goliath trope, because here citizens fought on behalf of a corporation, not against it. Despite the movement’s quick and decisive success, the protests provide an uncertain portrait of democracy. In many ways, Uber-users’ success represents the triumph of grassroots democracy, as citizens banded together to influence the government. Yet, Uber-users are for the most part a wealthy elite. Their use of social media can be seen as yet another way for the wealthy to exert disproportionate power, and lobby a government to bow to their consumer desires. Moreover, the Division’s reversal creates the troubling precedent of a state administrative agency succumbing to political and public pressure rather than making an objective legal decision. Despite these concerns, Uber-fans’ tactics can and should be replicated in future local government activism. Internet advocacy need not be limited to the wealthy and should instead be used to promote the needs and desire of an entire city.

Using Uber as a case study, this paper seeks to present both the potential successes and pitfalls of social media advocacy, showing how it can affect local government decision-making and support strong democracy, while simultaneously providing another method for the wealthy to exert disproportionate influence and potentially subvert the independent judiciary. Part I of this article will describe Uber’s business model and how the controversy surrounding Uber unfolded in Boston. Part II

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² Ron Lieber, *A Warning for Airbnb Hosts*, N.Y. TIMES, Nov. 30, 2012, <http://www.nytimes.com/2012/12/01/your-money/a-warning-for-airbnb-hosts-who-may-be-breaking-the-law.html?hp>.

³ *Id.*

will place this social media mobilization within the larger democratic, urban and legal contexts, discussing how the mobilization can be seen as a vision of strong democracy, an example of the wealthy exerting disproportionate lobbying power, and a troubling instance of a state agency bowing to special interest pressure. Part III will describe how future local movements can utilize Uber's example to impact local government decision-making.

I. The Controversy over Uber in Boston

The expansion of Uber into Boston is one of the best examples of web-based local government advocacy. Uber is a GPS-based livery service, popular among young professionals.⁴ Using a GPS app on their smartphones, customers can order, track, and pay for rides.⁵ Fans believe that Uber's model is a much-needed reform to a fundamentally broken taxicab industry.⁶ Proponents note its convenience, flexible pricing model,⁷ high wages⁸ and innovative addition to the economy and U.S. competitiveness.⁹ Nevertheless, Uber has been the subject of legal controversy in a number of U.S. cities, including Boston, San Francisco, New York and Washington, D.C.¹⁰

Uber launched in Boston in October 2011.¹¹ Approximately seven months later, the City of Cambridge arranged a sting operation where city officials accepted an Uber ride, and then ticketed the driver and issued Uber a civil citation for operating an unlicensed livery service and using an unlicensed measuring device (the GPS)¹² in

⁴ See Brian X. Chen, *A Feisty Start-Up Is Met With Regulatory Snarl*, N.Y. TIMES, Dec. 2, 2012, <http://www.nytimes.com/2012/12/03/technology/app-maker-uber-hits-regulatory-snarl.html?pagewanted=all>.

⁵ UBER LEARN MORE, <https://www.uber.com/cities> (last visited Dec. 4, 2012).

⁶ See Adam Ragusea, *Boston's Cabs Are Most Expensive Anywhere*, RADIOBOSTON, (Feb. 14, 2011), <http://radioboston.wbur.org/2011/02/14/taxi-cost>; Amy Bernstein, *Why I Don't Feel Bad for Boston Cab Drivers*, BOSTONINNO (Aug. 22, 2012), <http://bostinno.com/2012/08/22/why-i-dont-feel-bad-for-boston-cab-drivers/>.

⁷ But see John Cook, *Uber Defends Dynamic Pricing as Customers Complain About High Fees on New Year's Eve*, GEEKWIRE (Jan. 2, 2012, 9:53AM), <http://www.geekwire.com/2012/uber-defends-dynamic-pricing-customers-complain-excessive-fees/>.

⁸ Megan McCardle, *Why You Can't Get a Taxi*, THE ATLANTIC, May 2012, <http://www.theatlantic.com/magazine/archive/2012/05/why-you-cant-get-a-taxi/308942/>.

⁹ James Allworth, *How Corruption Is Strangling U.S. Innovation*, HARV. BUS. REV. BLOG NETWORK (Dec. 7, 2012, 11:43AM), http://blogs.hbr.org/cs/2012/12/how_corruption_is_strangling_us_innovation.html.

¹⁰ Chen, *supra* note 3 (noting controversies arising due to consumer safety, lack of licensing and dynamic pricing).

¹¹ Scott , *Test-Riding Uber, the Populist Car Service You Summon with a Mobile App*, THE BOSTON GLOBE, Oct. 18, 2011, http://www.boston.com/business/technology/innoeco/2011/10/test-riding_uber_the_populist.html.

contravention of M.G.L c. 98 §55.¹³ The Division of Standards adjudicated the civil citation on Uber’s use of a non-conforming device at a hearing on July 9, 2012.¹⁴ Foley Hoag, a well-respected, local law firm, represented Uber at the hearing, and argued that GPS technology is sufficiently well-tested and accurate to be the basis for calculating cab fares.¹⁵ Director of Standards did not find this argument persuasive, and Uber lost at the hearing.¹⁶ On August 1, 2012, the Massachusetts Division of Standards issued Uber a cease and desist order, holding that Uber’s use of unapproved GPS systems to assess transportation charges must be discontinued until such time as the standards for its use are established by the [National Conference on Weights and Measures].¹⁷

On August 14, Uber posted a message to its blog, discussing the recent opinion and noting that they are “committed to dialogue with the Division...and working closely with the agency to keep [their] service available.”¹⁸ The blog post elicited a flood of emails, tweets and Facebook posts from Uber-users, decrying the decision.¹⁹ An online petition²⁰ generated nearly 900 signatures in less than 24 hours.²¹ Responding to the online outcry, the Communications Director for Governor Patrick’s office tweeted on August 15 “With all has done for the innovation economy, we’re not shutting down .

12 Michael DeBonis, *Uber Runs Afoul of Massachusetts Regulators*, THE WASHINGTON POST, Aug. 10, 2012, http://www.washingtonpost.com/blogs/mike-debonis/post/uber-runs-afoul-of-massachusetts-regulators/2012/08/10/e8044bc6-e317-11e1-98e7-89d659f9c106_blog.html.

13 Compl. ¶ 7–8, *City of Cambridge v. Gelaye et al*, MICV2012-03675 (Mass. Super. Ct. filed Sept. 14, 2012) (noting that MGL c. 98 § 55 makes punishable using measuring devices that do not conform to legal standards).

14 Charles H. Carroll, *RE: Hearing Decision Civil Citation NO. 4576 Issued by City of Cambridge*, Aug. 1, 2012 at 1, <http://blog.uber.com/wp-content/uploads/2012/08/Div-of-Standards-Decision-re-Uber0-1-1.pdf> (hereinafter “Hearing Decision”). The Division did not have jurisdiction over the unlicensed livery service claim. *Id.*

15 *Id.* at 1–2.

16 *Id.* at 2–3.

17 *Id.*

18 travis, *Uber Boston Has Been Served*, UBER BLOG, (Aug. 14, 2012), <http://blog.uber.com/2012/08/14/uber-boston-has-been-served/> (hereinafter “Uber Served”).

19 Twitter Trackback for *Uber Served*, TOPSY, www.topsy.com (follow “Tweets” hyperlink; search “<http://blog.uber.com/2012/08/14/uber-boston-has-been-served/>”; then follow “Search” hyperlink; follow “more” hyperlink” as required) (listing tweets that refer to the *Uber Served* article including many from August 15, 2012).

20 Jason Henrichs, *Division of Standards of the Commonwealth of Massachusetts: Allow Uber to Keep Operating*, CHANGE.ORG, (Aug. 2012), http://www.change.org/petitions/division-of-standards-of-the-commonwealth-of-massachusetts-allow-uber-to-continue-to-operate?utm_campaign=mailto_link&utm_medium=email&utm_source=share_petition (hereinafter “Uber Peition”).

21 Ryan Lawler, *Uber Gets the Green Light in Boston, With Help from the Governor’s Office*, TECHCRUNCH, (Aug. 15, 2012), <http://techcrunch.com/2012/08/15/uber-boston-green-light/>.

Working on a swift resolution.”²² Shortly thereafter, Governor Patrick retweeted the commitment.²³

That same day the Division of Standards reversed its decision and approved Uber’s use of GPS for fare and distance calculation.²⁴ The Division rested its decision on the fact that it had “became aware” that Uber’s GPS-device was currently being evaluated for certification by the National Institute of Standards and Technology.²⁵ Nevertheless, it seems clear the decision was brought about by the wave of public opinion. Indeed, the decision echoed the language of the petition and the Governor’s tweet, noting that “Massachusetts is a leader in innovation” and that the Division “applaud[s] Uber’s innovative spirit.”²⁶ Governor Patrick tweeted the Division’s decision with a brief “problem solved,” and the hashtag “#innovation.”²⁷ A month later, in mid-September, the City of Cambridge sued the Division of Standards to overturn the reversal, arguing that its decision to allow Uber to operate was “unsupported by substantial evidence, arbitrary and capricious,” and “an abuse of discretion”²⁸ under MGL c. 30A §14.²⁹

Governor Patrick’s hashtag got two things right: not only is Uber an innovative livery model, but also the twitter firestorm that brought about the modified decision is a unique and innovative way for citizens to effect change on a local level. The Uber story presents a fascinating marriage of ages-old local organizing and newly-formed web-based advocacy, and it probably will go down in history as one of the few times that young professionals have ever been informed about a decision of the Massachusetts Division of Standards. The outcry also provides an interesting twist to the traditional David and Goliath trope, because here local citizens were not battling a corporation, but rather battling on its behalf. Uber captured local opinion not just with its service, but also with its brilliant rhetoric. Uber framed its legal issues perfectly, presenting itself as a David

22 Brendan Ryan (@brendanbrendan), twitter.com (Aug. 15, 2012, 1:35PM), <https://twitter.com/brendanbrendan/status/235791964929392641> (last visited Dec. 10, 2012).

23 Deval Patrick (@MassGovernor), twitter.com (Aug. 15, 2012, 1:42PM), <https://twitter.com/MassGovernor/status/235793653019332608> (last visited Dec. 10, 2012).

24 Charles H. Carroll, *RE: Modified Hearing Decision Civil Citation N. 4576 Issued by City of Cambridge*, Aug. 5, 2012 at 1, <http://www.mass.gov/ocabr/docs/dos/massachusetts-gives-green-light-for-uber-technologies.pdf> (hereinafter “Modified Decision”).

25 *Id.*

26 *Massachusetts Gives Green Light for Uber Technologies* <http://www.mass.gov/ocabr/docs/dos/massachusetts-gives-green-light-for-uber-technologies.pdf>.

27 Deval Patrick (@MassGovernor), twitter.com (Aug. 15, 2012, 6:19PM), <http://twitter.com/MassGovernor/status/235863296375418880> (last visited Dec. 10, 2012).

28 Colman M. Herman, *City Sues to Overturn State OK of Uber Livery Service*, THE BOSTON GLOBE, Sept. 28, 2012, <http://www.boston.com/business/innovation/2012/09/28/cambridge-sues-overturn-state-uber-livery-service/a5Qp8MbTqLi3Wh0r1ull9L/story.html>.

29 Compl. ¶ 1.

battling the deeply entrenched, political-machine Goliath of the taxicab industry.³⁰ By styling itself as an innovator unfairly persecuted by rent-seeking laws, the start-up is able to capitalize on people's desire to advocate for the underdog.³¹ In mobilizing via social media, people are not just exercising their democratic right to be heard but also combatting an arbitrary agency decision that favors a corrupt system.³²

II. Placing Uber-Fans' Social Media Mobilization in a Democratic, Urban and Legal Context

There are a number of competing narratives at work in Uber-fans' successful social media strategy. On the one hand, Uber-fans' mobilization is a triumphant example of how citizens can use social media to affect local government decision-making, and they provide a striking example of strong democratic principles at work in the 21st century. On the other hand, this vision of Uber-fans as grassroots mobilizers can be complicated by the fact that Uber-users most likely represent a wealthy minority. Their use of social media can be seen as yet another way for the wealthy to exert undue influence on the government and can sanction a fee-for-service mentality of the city. Moreover, Uber-users mobilized to retaliate against a legal decision, not a policy one, and the use of social media to overturn an administration decision creates an unwelcome precedent for Massachusetts.

A. Uber-Users as Forces of 21st Century Strong Democracy

Uber-users accomplished something special in getting the government to be responsive to their concerns. Their amorphous, web-based advocacy provides a 21st century example of Barber's strong democracy, where "to be a citizen is to participate."³³ Some critics argue that shallow internet advocacy cannot and should not substitute for true, deeper citizen engagement³⁴, particularly because citizens will disengage when their "clicks" are not heeded.³⁵ The Uber story provides a compelling counter-example to this claim. Uber-riders petitioned and influenced a local government solely via social media,

³⁰ See Chen, *supra* note 3 (quoting Uber CEO as saying that Cambridge, MA has "some of the most anticompetitive, corrupt transportation laws in the country"); *Conversation with Uber Boston*, Boston Public Radio (Dec. 6, 2012), <http://www.wgbhnews.org/post/conversation-uber-boston> (noting there are "elements of protectionism in play").

³¹ Lieber, *supra* note 1 (explaining that getting customers to lobby on your behalf is a "brilliant corporate strategy").

³² Indeed, this mobilizing will further strengthen fans' opinion, as advocating for a position has shown to make people more committed than they might have been otherwise.

³³ BENJAMIN R. BARBER, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* 155 (2004) (noting that "to be a citizen is to participate in a certain conscious fashion").

³⁴ Gladwell, *supra* note 33 (arguing that "the revolution will not be tweeted" because social media creates weak ties, whereas strong ties are needed for real social activism).

as 24 hours wasn't even sufficient time to mount a traditional response. In all likelihood, most Uber-riders are otherwise unconnected to and unconcerned with local government,³⁶ as evidenced by low voter turnout rates among young people.³⁷ Yet Uber-users rallied together to fight a decision by an obscure state agency. When they won, they won as citizens. As the update on the petition notes, "it's amazing to live in a country where our voices can be heard and... make a difference."³⁸ Based on Barber's strong democracy theory, Uber fans have become better off for their advocacy: "freedom is what comes out of the process, not what goes into it."³⁹

Uber strategy engaged so many young people because it allowed young citizens to participate on their own terms. In many ways, young people today feel most at home online.⁴⁰ An amorphous web-based strategy allows them to keep their autonomy and respond in ways they feel comfortable, choosing among twitter or Facebook or email. Much like previous generations took to the streets to march for causes they felt strongly about,⁴¹ the current young generation may prefer to take to the virtual streets, petitioning the government via text not marches.⁴² "Face-to-face citizen assemblies" may no longer be "essential to democracy,"⁴³ so long as citizens can engage with one another and with the government online.

B. Uber-Users as Wealthy, Lobbying 'Consumer Citizens'

35 KARPF, *supra* note 30, at 8 (outlining critiques of e-advocacy including concern that shallow online citizen engagement obstructs deeper involvement and fears that people will abandon all advocacy when their clicks do not change outcomes).

36 Michael X. Delli Carpini, *Gen.Com: Youth, Civic Engagement and the New Information Environment*, 17 POL. COMM. 341, 341-42 (2000) (noting youth are less likely to be engaged politically, "participate in politics beyond voting," participate in community organizations or civic engagement).

37 See e.g., *id.* at 342; NonprofitVOTE, *America Goes to the Polls 2010: Voter Participation Gaps*, N (noting only 24% of citizen youth aged 18-29 turned out for the non-presidential, mid-term elections in 2010).

38 *Uber petition*, *supra* note 19.

39 BARBER, *supra* note 45 at 152.

40 See, e.g., Ben Bryant, *Four out of Five Young People Feel 'Lost' Without the Internet*, THE TELEGRAPH, Oct. 30, 2012,

<http://www.telegraph.co.uk/technology/internet/9643082/Four-out-of-five-young-people-feel-lost-without-internet.html>

Rebecca J. Rosen, *56% of Young People Say the Internet is Shaping Who They Are*, THE ATLANTIC, June 27, 2012, <http://www.theatlantic.com/technology/archive/2012/06/59-of-young-people-say-the-internet-is-shaping-who-they-are/259022/>;

41 EARL & KIMPORT, *supra* note 30, at 65.

42 Stephen Coleman, *Remixing Citizenship: Democracy and Young People's Use of the Internet*, CarnegieYPI, at 3-6

http://ccp.obiki.org/resources/libraryresearch/reportremixingcitizenshipdemocracyandyoungpeoplesuseoftheinternet.attachment/attachment/Carnegie_v3LRES_0.pdf.

43 Hanna Pitkin & Sara Shumer, *On Participation*, in DEMOCRACY: A READER 452, 454 (Ricardo Blaug & John Schwarzmantel eds., 2001).

On Participation, 2 Democracy 23, 50 (1992).

Yet this narrative of Uber-users as majoritarian mobilizers must be complicated somewhat by the acknowledgment that Uber users are wealthy, and their success can be tied to issues of gentrification, disproportionate political power as well as consumer mindsets. Uber is a livery service for the relatively wealthy; it is available only to those with smartphones and disposable incomes.⁴⁴ Indeed, Uber bills itself as an “everyone’s private driver,”⁴⁵ with a fleet of luxury sedans and leather-upholstered SUVs. In this light, Uber acts like Eisinger’s “Bread and Circuses,” where a local government adds amenities, for example art museums and stadiums, to attract wealthy residents back to the city.⁴⁶

This vision of Uber as a luxury good for wealthy urban residents might put its fans’ triumphant use of social media to influence local government in a different light. Rather than represent traditional, grassroots organizing, Uber’s story may exemplify special interest lobbying at its worst: a wealthy minority subverting the local democratic process to advance their frivolous cause. Though potentially a great equalizer,⁴⁷ in this context social media acted as a “weapon of the strong,”⁴⁸ allowing the relatively affluent to exert undue influence.⁴⁹ Aided by the digital divide,⁵⁰ Uber fans used internet advocacy to “do little more than push private interests, pursue selfish ambitions, and bargain for personal gain.”⁵¹

44 Uber’s base rate is \$7, approximately the federal minimum wage, and three times the base rate for a tradition taxicab, and three times the cost of public transportation in Boston. A boston.com commentator noted this explicitly, “For example, it’s base rate is \$7/ride, which is approximately the federal minimum wage, 3 times the base rate for a traditional taxi cab, and three times the cost of public transportation in Boston; A Boston.com commentator noted this explicitly: “A lot of squabbling and bickering for wealthy folks to pay for an expensive "high end" ride. Let 'em fight it out. Most of the rest of us never take taxis or certainly livery rides, if we can help it. Way too expensive.” [redglare2](#), Comment to *Cambridge Sues to Overturn State OK of Uber Livery Service*, THE BOSTON GLOBE, Sept. 28, 2012,

<http://www.boston.com/business/innovation/2012/09/28/cambridge-sues-overturn-state-uber-livery-service/a5Qp8MbTqLi3Wh0r1u1l9L/story.html?comments=all#readerComm>

45 UBER: EVERYONE’S PRIVATE DRIVER, <https://www.uber.com> (last visited Dec. 11, 2012).

46 Peter Eisinger, *The Politics of Bread and Circuses* 35 Urban Affairs 316 (2000).

47 See KAY LEHMAN SCHLOZMAN ET AL., THE UNHEAVENLY CHORUS 485 (2012) (noting some hoped the internet would “permit ordinary people to short-circuit political elites”).

48 *Id.* at 483.

49 *Id.* at 495–98.

50 See, e.g., Michelle Gilber and Karen Mossberger, *Race, Place and Information Technology*, 41 URB. AFF. REV. 583, 583–84 (finding that African American and Latinos are less likely to have information technology skills in the U.S. and hypothesizing on the causes); Paul S. Herrnson et al., *Campaign Politics and the Digital Divide*, 60 PUB. RES. Q. 31 (noting the internet “digital divide” has led to a political divide); SCHLOZMAN ET AL., *supra* note 59 at 486.

Moreover, Uber's story may exemplify not just self-interested politics, but also a consumer model of democracy, where a local government can be bought and sold.⁵² Noting that cities increasingly charge fees rather than levy taxes for local services, theorists have argued that such a shift has affect citizens' mindset, leading them to treat government actions "like any other market transaction in a consumer economy."⁵³ In this light, Uber-users rallied not as citizens seeking to remedy an injustice, but rather as 'citizen consumers,' seeking the right to purchase a good, regardless of applicable laws or government decisions.⁵⁴ In this sense, their success can be seen as the Massachusetts government's acquiescence to market pressure, as it bowed to the old adage "the customer is always right."⁵⁵

Yet, despite their wealth, the narrative of Uber-users as an elite group "buying" a change in the government's posture is overly simplistic. As with any legal decision, there are two sides to the debate. As much as fans of Uber want it operational, cab drivers surely want to stifle the competition. Those interested in the success of the taxicab industry have equal if not greater incentive to lobby against Uber.⁵⁶ The change.org petition explicitly mentions the power and entrenchment of the taxicab industry, explaining that the current system "only benefits the incumbents while consumers and our local economy suffer."⁵⁷ The mobilization can still be viewed as the wealthy using social media to wield disproportionate clout, but it must be recognized that it is not a strict power versus poverty dichotomy, as their opponents are also powerful.

C. Uber-Users as Subverting the Legal System

51 Benjamin Barber, *Strong Democracy*, in *DEMOCRACY: A READER* 447, 449 (Ricardo Blaug & John Schwarzmantel eds., 2001).

52 "Conceptions of citizenship, justice and morality have increasingly been informed by neoliberalist rationality with the state justifying itself and its actions primarily according to market logic, rather than principles of democracy and justice." LAAM HAE, *THE GENTRIFICATION OF NIGHTLIFE AND THE RIGHT TO THE CITY: REGULATING SPACES OF SOCIAL DANCING IN NEW YORK* 23 (2012).

53 Laurie Reynolds

54 Margaret Scammel has argued for 'citizen consumers,' where the "act of consumption is suffused with citizenship characteristics." Here it is the opposite: the act of citizenship is consumed with consumption characteristics. Margaret Scammell, *The Internet and Civic Engagement: The Age of the Citizen-Consumer*, 17 *POL. COMM.* 351 (2000). It is important to note that the Uber petition uses citizenship not consumer language, asking "should the government serve the incumbets or the citizens?" *Uber Petition*, *supra* note 19.

55 In all fairness to the Governor, employees of the Governor's office were themselves customers, and therefore it was in their best interest to see Uber reinstated. See Brendan Ryan (@brendanbrendan), twitter.com (Aug. 15, 2012, 1:54PM), <https://twitter.com/brendanbrendan/status/235796729017024512> (last visited Dec. 10, 2012) (noting "full disclosre: very popular in office.").

56 See Kirsner, *supra* note 38.

57 *Uber Petition*, *supra* note 19.

Though Uber-fans' accomplishments are impressive, their victory comes at the expense of the Massachusetts administrative hearing system. Uber's hearing with the Division of Standards was not about whether Uber should be allowed to operate in Massachusetts, but rather whether Uber legally was allowed to operate in Massachusetts. Though the agency explained its reversal as resulting from new information, it is quite clear its reversal was based on public outcry and the Governor's intervention. Assuming a 'state unitary executive theory,' the Governor was within his rights to ask the agency to reconsider the decision, and yet the optics of such intervention are quite poor, as the agency clearly bowed to gubernatorial and public pressure.⁵⁸

Aside from simply poor optics, the agency's modified decision could harm the legitimacy of the judiciary at large. The agency's quick reversal lacks any legal basis, as the facts of the case have not changed and its stated rationale for reversal does not cure the initial holding. The Division's stated rationale for the reversal was that its had "since learned that [Uber's GPS technology] is currently under review for development of standards by the National Institute of Standards and Technology."⁵⁹ However, the parties' pre-hearing briefs discussed the NIST working groups, as well as potential amendments to the taximeter code.⁶⁰ Moreover, though the Division noted in its amended decision that it "historically" allowed provisional approval for devices being studied, the initial decision unequivocally required that "commercial devices...receive type approval under the NTEP prior to being placed into commercial use."⁶¹ Indeed, the Division was explicit in its remedy: Uber's use of GPS must be "discontinued until such time as the standards for its use are established by NCWM and published in NIST Handbook 44."⁶²

Though agencies have discretion and should be responsive to public opinion in rulemakings, as a matter of policy agencies should not answer questions of law and settle adjudications based on public opinion. The Division was obligated to apply the law, even though Uber-users and the Governor were disappointed with the decision. Its reversal may leave public safety issues unaddressed,⁶³ and certainly creates a bad precedent moving forward, as activist groups may attempt to apply pressure on the Governor in order to change administrative decisions. Despite courts' deference to agencies, the Division's decision to reverse the cease and desist order could be viewed as "an abuse of

58 [adamg](http://www.universalhub.com/2012/cambridge-really-doesnt-uber-city-sues-block-onlin), *Cambridge Really Doesn't Like Uber; City Sues to Block Online Car Service*, Universal Hub, (Sept. 29, 2012, 8:13AM),

<http://www.universalhub.com/2012/cambridge-really-doesnt-uber-city-sues-block-onlin> (explaining how the Division of Standards reversed itself "when it learned, oops, the governor likes Uber."). Indeed the Division, "apologize[d] for any confusion or inconvenience." *Massachusetts Gives Green Light for Uber Technologies* <http://www.mass.gov/ocabr/docs/dos/massachusetts-gives-green-light-for-uber-technologies.pdf>.

59 *Id.*

60 *See* Compl. ¶¶ 12, 15, 21.

61 *Hearing Decision*, *supra* note 13, at 3.

62 *Id.* at 2.

63 Herman, *supra* note 27) (quoting Cambridge City attorney Elizabeth Lashway who explained that "the taxi industry is heavily regulated for reasons of public safety, consumer protection, and fair competition.").

discretion” and “arbitrary and capricious” as the City of Cambridge claimed in a complaint filed in Massachusetts Superior Court.⁶⁴

Though citizen intervention should not affect administrative hearing and legal decisions, citizen mobilization can and should play a role in the legal system in other ways. Citizens should be able to use social media to affect agency policy decisions such as rulemakings and permit approvals. Some federal, state and local agencies are experimenting with accepting comments via email, and perhaps in the future twitter and Facebook. In the Uber arena, citizens could use social media to petition the “Smartphone Apps Taskforce” with taxi regulators from 15 cities, which recently drafted guidelines on Uber’s operations.⁶⁵ Rather than attempt to overturn city decisions and local ordinances one-by-one, citizens should mobilize together to lobby the taskforce in support of Uber.

III. Uber as an Example: Mobilizing Movements going Forward

Though there are certainly potential pitfalls, social media holds great promise for mobilizing local democracy in the future. Though Uber’s story has troubling aspects, Uber fans’ accomplishment is impressive. Moving forward the question becomes how to move social media local government advocacy beyond the playgrounds of the wealthy, because this mobilization should be accessible to all and should be used to promote the needs and desires of an entire city. To make social media campaigns effective, activists should use rhetoric that resonates with broader local issues. Ultimately however, for social media advocacy to be deployed democratically, cities may need to help bridge the digital divide.

The Uber strategy was likely so successful because the “innovation economy” rhetoric used resonated with broader local issues, including concerns over technology and competitiveness. The petition to reinstate Uber states “if Boston is to continue to be a hot bed of start up and innovation, we need to provide an environment where new ideas and business models can take root.”⁶⁶ By protesting the shutdown with #innovation, Uber users expanded the discussion beyond the car-service. They were expressing a desire to live in a city open to new business models and technologies, a city committed to allowing successful companies the opportunity to thrive. Clearly those issues resonate with local and state governments, and by naming the issue, Uber user’s forced the government to follow through on its commitments rather than simply play lip-service to the idea of “innovation.” This type of rhetoric can be mobilized to address issues facing the non-wealthy. Future advocates can follow Uber’s lead and capitalize on issues that resonate with local government and echo promises politicians have made previously. Social media can be used both to rally a movement, and also to hold politicians accountable, and the most effective movements will do both.

64 Compl. ¶ 24 (stating that “the City’s substantial rights have been prejudiced because the Modified Decision is in excess of statutory authority and jurisdiction of the agency, based upon an error of law, made upon unlawful procedure, unsupported by substantial evidence, arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law.”).

65 Chen, *supra* note 3.

66 *Uber Petition*, *supra* note 19.

Internet advocacy has huge promise for local government advocacy, because a small number of people with few resources beyond a computer and internet connection can reach a wide swath of the population, including influential government leaders. However, to best include all citizens in social media style participatory democracy, governments must assist in closing the digital divide.⁶⁷ For example, cities, including Chicago and Minneapolis, have already mobilized to help provide low-income populations with access to the internet.⁶⁸ Massachusetts has committed itself to innovation, and Boston as a city is open to the idea of using social media to transform democracy, as it currently boasts an Office of New Mechanics⁶⁹ and champions “participatory urbanism projects,” many of which rely on smartphone technology.⁷⁰ Massachusetts and other states must help provide access to the internet for all citizens, or else they risk allowing social media, the greatest hope for participatory democracy, to become yet another weapon of the wealthy. If the internet becomes the easiest path to political influence, then it becomes a preserving right, like voting, and it should be provided equally. Maybe Uber-users could help share the internet advocacy wealth and start a social media campaign lobbying for greater internet access -- #innovation #internetforall anyone?

67 Songphan Choemprayon, *Closing the Digital Divides: The United States' Policies*, 56 LIBRI 201 (2006).

68 [alizasherman](#), *How Cities Are Fighting to Close the Digital Divide*, MASHABLE (Apr. 20, 2011), <http://mashable.com/2011/04/20/close-digital-divide/>.

69 MAYOR'S OFFICE OF NEW URBAN MECHANICS, <http://www.cityofboston.gov/newurbanmechanics/> (last visited Dec. 10, 2012).

70 See, e.g., Michael B. Farrell, *Boston Unveils BAR App, or Boston About Results, a Virtual Score Card for City Services*, THE BOSTON GLOBE, Dec 3, 2012, <http://www.boston.com/business/innovation/2012/12/04/boston-unveils-bar-app-boston-about-results-virtual-score-card-for-city-services/ixYjIOwf5jidvBWGZ6242N/story.html> (describing an app that provides statistics on the city of Boston); Shira Ovide, *Tapping 'Big Data' to Fill Potholes*, WALL ST. J., June 12, 2012, <http://online.wsj.com/article/SB10001424052702303444204577460552615646874.html> (describing “Street Bump” an app that identifies potholes as people drive).