



## ESSAY

## A Loophole Large Enough to Drive an Autonomous Vehicle Through: The ADA's "New Van" Provision and the Future of Access to Transportation

Bryan Casey\*

"If it looks like a duck, and quacks like a duck, we have at least to consider the possibility that we have a small aquatic bird of the family Anatidæ on our hands."<sup>1</sup>

—Douglas Adams

### Introduction

In August 2016, Uber startled the world by announcing that its customers would soon have a small chance of getting a very big surprise.<sup>2</sup> The company revealed that, effective later that month, certain users who request an Uber taxi in the Pittsburgh area will be randomly selected to receive a free ride in one of roughly one hundred brand-new Volvo XC90 luxury SUVs.<sup>3</sup> And, lest anyone should fail to notice, a robot will be driving.<sup>4</sup>

The pioneering transition makes Uber the first company in United States history to offer ordinary consumers rides in self-driving taxis.<sup>5</sup> It is a moment that carries an air of epochal significance, akin to the introduction of the Ford Model T to American roadways. And the optimism afforded this bold step into the future owes in no small part to the potential benefits driverless vehicles hold for disabled and elderly populations otherwise unable to drive.

Yet whether this technology will ultimately be accessible to such populations is far from guaranteed. In fact, it is unclear whether key provisions

---

\* J.D. Candidate, Stanford Law School, 2018.

1. DOUGLAS ADAMS, *DIRK GENTLY'S HOLISTIC DETECTIVE AGENCY* 216 (1987).

2. Max Chafkin, *Uber's First Self-Driving Fleet Arrives in Pittsburgh This Month*, BLOOMBERG (Aug. 18, 2016), <http://bloom.bg/2bzTbsU>.

3. *Id.*

4. *Id.*

5. *Id.*

of the Americans with Disabilities Act (“ADA”) will even apply to the type of autonomous vehicles Uber is deploying. That is because the ADA imposes vehicular-accessibility requirements on private transportation providers by mandating that all “new vans” in their fleets be accessible to individuals with disabilities—but never actually defines the term “van.”<sup>6</sup> And thanks to a loophole that has, for decades, allowed taxi companies to sidestep the ADA’s “new van” requirements by purchasing used vehicles instead of new ones, this gaping lack of definition remains unaddressed to this day.<sup>7</sup>

With the emergence of Uber’s driverless transportation model, however, it appears that the used vehicle loophole’s days are finally numbered. Beginning with one hundred Volvo XC90 SUVs and expanding exponentially, Uber will now be bulk-purchasing new vehicles and outfitting them with aftermarket self-driving equipment for use in its taxi fleet.<sup>8</sup> Uber’s break with convention means that, for the first time since the ADA’s passage, a major transportation company’s vehicular-accessibility obligations will turn entirely on whether certain vehicle types that straddle the line between “automobile” and “van”—such as SUVs—qualify as “vans.”

What is more, Uber is far from the only multibillion-dollar company with a stake in this outcome. With other industrial titans like Lyft, Tesla, Ford, and BMW also announcing their intent to enter the autonomous transportation market, the definition that ultimately attaches to this single term stands poised to have vast economic and moral implications.<sup>9</sup> Indeed, hundreds of millions of dollars,<sup>10</sup> as well as the future of transportation access for millions of Americans, may now hinge on a question that borders on the metaphysical: Just what, exactly, is a van?

---

6. See 42 U.S.C. § 12184(a)-(b) (2015).

7. See *infra* Part II.

8. Chafkin, *supra* note 2.

9. 33 *Corporations Working on Autonomous Vehicles*, CB INSIGHTS (Aug. 11, 2016), <https://www.cbinsights.com/blog/autonomous-driverless-vehicles-corporations-list>.

10. See RAY MUNDY ET AL., UNIV. OF MO. ST. LOUIS CTR. FOR TRANSP. STUDIES, *ASSESSING THE FULL COST OF IMPLEMENTING AN ACCESSIBLE TAXI PROGRAM* 4-10 (2010), <https://www.tlpa.org/costcalculator/report.pdf> (“A [wheelchair] conversion package installed on a personally owned vehicle costs around \$11,500 to \$12,590.”). There are approximately 230,000 taxi drivers, 327,000 active Uber drivers, and over 100,000 active Lyft drivers in the United States. See BUREAU OF LABOR STATISTICS, *OCCUPATIONAL OUTLOOK HANDBOOK: TAXI DRIVERS AND CHAUFFEURS* (2015), <http://www.bls.gov/ooh/transportation-and-material-moving/taxi-drivers-and-chauffeurs.htm>; Biz Carson, *Why There’s a Good Chance Your Uber Driver is New*, BUSINESS INSIDER (Oct. 24, 2015, 11:34 AM), <http://read.bi/1ON1XLP>; Lyft CEO: *We Have Over 100,000 Drivers Across the Country*, BLOOMBERG (Mar. 6, 2015, 11:29 AM), <http://bloom.bg/1Bbtm1K>. The conversion costs of modifying just 2% of a similarly sized driverless fleet at \$10,000 per vehicle would exceed \$100,000,000.

## I. The Americans with Disabilities Act's "New Van" Provision

The ADA is a federal antidiscrimination statute designed to protect the civil rights of people with disabilities.<sup>11</sup> Among other stipulations, Title III of the Act provides: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services . . ."<sup>12</sup> In fulfilling this mandate, the law requires that vehicles operated by public transportation providers, as well as those operated by "private entit[ies] . . . primarily engaged in the business of transporting people and whose operations affect commerce" be "readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs."<sup>13</sup>

In light of this broad mandate to promote accessibility, one may wonder why—more than twenty-six years after the ADA's passage—"only a very small percentage of taxis nationwide are accessible."<sup>14</sup> The answer lies in an obscure provision, buried deep in the ADA, which exempts virtually all taxicabs from vehicular-accessibility requirements, except for taxis that are "new van[s] with a seating capacity of less than 8 passengers, including the driver."<sup>15</sup>

This somewhat convoluted carve-out—phrased as a double negative exemption—traces its origins to the ADA's early congressional negotiations.<sup>16</sup> In theory, the provision was intended as a stopgap measure, allowing pre-ADA transportation services a grace period during which they could acquire new, fully-accessible vans in a piecemeal fashion without incurring debilitating liabilities for those already within their fleets.<sup>17</sup> In practice, however, it has proven to be the opposite of a stopgap. In the quarter century since the ADA's

---

11. See 42 U.S.C. § 12101(b) (2015).

12. *Id.* § 12184(a).

13. *Id.* § 12184(a)-(b). This Essay does not address the "equivalent service" standard.

14. See LEADERSHIP CONFERENCE EDUC. FUND, EQUITY IN TRANSPORTATION FOR PEOPLE WITH DISABILITIES 3 (2012), <http://www.civilrightsdocs.info/pdf/transportation/final-transportation-equity-disability.pdf>.

15. 42 U.S.C. § 12184(b)(3)-(5) (2015).

16. Compare S. 933, 101st Cong. § 403(b)(3) (as introduced in the Senate, May 9, 1989), with H.R. 2273, 101st Cong. § 304(b)(3) (as reported in the House, May 15, 1990) (adding "new van" provision that did not exist in earlier drafts).

17. Cf. S. 933, 101st Cong. § 403(b)(5) (as introduced in the Senate, May 9, 1989); *Americans with Disabilities Act: Hearing on H.R. 2273 Before the H. Subcomm. on Surface Transp. of the H. Comm. on Pub. Works and Transp.*, 101st Cong. 449-70 (1989) (statements of Alfred B. LaGasse, III, Executive Vice President, International Taxicab Association; Rudolph H. Bruhns, Executive Vice President, Yellow Cab Service Corporation; Robert M. Werth, President, Diamond Transportation Services, Inc.) (discussing financial burdens of imposing taxicab vehicular-accessibility requirements); Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Partial Summary Judgment at 15, *Taxis for All Campaign v. N.Y. City Taxi & Limousine Comm'n*, No. 11-cv-0237 (GBD) (S.D.N.Y. Aug. 29, 2013) ("By requiring that new vans . . . be made accessible to wheelchair users the ADA . . . struck a compromise which vastly increased the opportunities for [individuals] with disabilities without overly burdening business interests.").

passage, this seemingly unassuming exemption has grown into a “gaping loophole” large enough for taxi companies to drive entire fleets through.<sup>18</sup>

Faced with the costly requirement that any “new van” purchased for service in their fleets be fully accessible,<sup>19</sup> cab companies in the post-ADA era zeroed in on a single adjective within the mandate’s wording that offered the legal equivalent of an escape hatch.<sup>20</sup> The operative modifier—as far as taxi companies were concerned—became the word “new.” And the escape hatch? To evade Title III’s vehicular-accessibility requirements by purchasing used vehicles instead of new ones.<sup>21</sup>

With this single maneuver, cab companies spared themselves the considerable collective costs of transitioning to wheelchair-accessible fleets. And with no sunset clause on the van exemption, this state of affairs persists to this day.<sup>22</sup> Taxi companies nationwide continue to purchase used vans rather than new ones—thereby sidestepping the additional costs of retrofitting vehicles with wheelchair ramps or lifts, providing additional training to drivers, paying higher insurance premiums on more expensive vehicles, and losing seating capacity occupied by heavy-duty equipment.<sup>23</sup>

Call it poor draftsmanship or a genuinely unforeseeable consequence—the upshot of Title III’s “new van” provision remains the same. It spawned a regulatory dichotomy that has since played out like a science experiment: Exempt one transportation entity from key accessibility requirements and watch what unfolds. Twenty-six years out, the results of this inadvertent experiment could not be clearer. A full 99.8% of public transportation buses, which are not exempt from vehicular-accessibility requirements, are now equipped to accommodate wheelchair users.<sup>24</sup>

---

18. See *Toomer v. City Cab*, 443 F.3d 1191, 1196-97 (10th Cir. 2006) (quoting Reply Brief of Appellants Barbara Toomer and Disabled Rights Action Committee at 8, 11, *Toomer*, 443 F.3d 1191 (No. 05-4091), 2005 WL 6529271, at \*8, \*11).

19. See 42 U.S.C. § 12184(b)(5) (2015).

20. See Reply Brief of Appellants, *supra* note 18, at 8 (“Cab [c]ompanies . . . exploit the loophole that is created [by the word ‘new.’]”); Brief of Appellees at 4, *Toomer*, 443 F.3d 1191 (No. 05-4091), 2005 WL 3445798, at \*8 (“Since the enactment of the ADA, appellee[s] [have] not utilized ‘new’ vans in [their] taxicab fleet[s]. Any vans that have been operated . . . have been used vehicles.”). There are other economic forces driving this trend. Used vehicles are, of course, cheaper than new ones. Fuel efficiency, improvements in public transportation accessibility, and lack of enforcement have also played a role. See generally MUNDY, *supra* note 10, at 4-10.

21. See *supra* note 20.

22. See 42 U.S.C. § 12184 (2015).

23. See MUNDY, *supra* note 10, at 4-10.

24. Therese McMillan, *ALL Aboard: 25 Years Ago, ADA Opened Transit to People with Disabilities*, FAST LANE: OFFICIAL BLOG OF THE U.S. DEP’T OF TRANSP. (July 24, 2015), <https://www.transportation.gov/fastlane/all-aboard-ada-opened-transit>.

Meanwhile, notwithstanding a few important exceptions, “only a very small percentage of taxis nationwide are accessible.”<sup>25</sup>

## II. Tomorrow’s Taxis, Yesterday’s Vans

Precisely because the ADA’s “new” versus “used” distinction had, for decades, proved such a formidable carve-out for cab companies, few in the legal community had paid any heed to the provision’s other key descriptor—namely, the term “van.” That is, until 2011, when the New York City Taxi and Limousine Commission (“TLC”) announced it would be bulk-purchasing Nissan NV200 minivans as part of a citywide overhaul of its fleets, called the “Taxi of Tomorrow” initiative.<sup>26</sup>

What the TLC seemingly failed to anticipate, however, was that by purchasing large, brand-new vehicles, it would be breaking with the longstanding tradition of buying used ones that were ADA-exempt. Disability rights activists, spotting the opening created by the TLC’s unconventional approach, pounced. They sued the TLC, arguing that the NV200s qualified as “new vans” under Title III and therefore must be wheelchair accessible.<sup>27</sup>

With the “new” versus “old” distinction out of the picture, the legal question came to hinge entirely on whether the Nissan minivans were, in fact, vans for the purposes of Title III.<sup>28</sup> But as it turns out, despite the ADA’s repeated use of the word “van,” nowhere in the statute nor its implementing regulations was the term actually defined.<sup>29</sup> Indeed, at the time of the ADA’s drafting, vehicle types that straddled the line between sedans and vans—such as minivans and SUVs—had not yet risen to the level of national popularity they enjoyed in the years following the statute’s passage.<sup>30</sup> The ADA’s drafters, by dividing the universe of passenger vehicles into “automobiles” and “vans,” evidently believed they had covered all of their bases. And because the longstanding exemption for used vehicles had essentially obviated the need for clarification, this gaping hole in Title III went ignored for more than two decades.

---

25. See LEADERSHIP CONFERENCE EDUCATION FUND, *supra* note 14, at 3.

26. Press Release, Office of the Mayor, Mayor Bloomberg Announces Nissan NV200 as the Taxi of Tomorrow (May 3, 2011), <http://www.nyc.gov/html/om/html/2011a/pr139-11.html>.

27. NAT’L COUNCIL ON DISABILITY, TRANSPORTATION UPDATE: WHERE WE’VE GONE AND WHAT WE’VE LEARNED 273 (2015), [http://www.ncd.gov/rawmedia\\_repository/862358ac\\_bfec\\_4afc\\_8cac\\_9a02122e231d.pdf](http://www.ncd.gov/rawmedia_repository/862358ac_bfec_4afc_8cac_9a02122e231d.pdf).

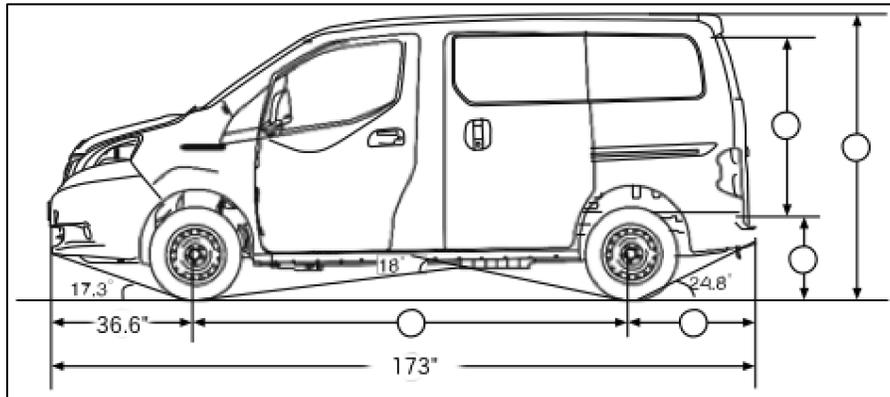
28. *Id.*

29. See 42 U.S.C. § 12184 (2015); 49 C.F.R. § 37.3 (2016).

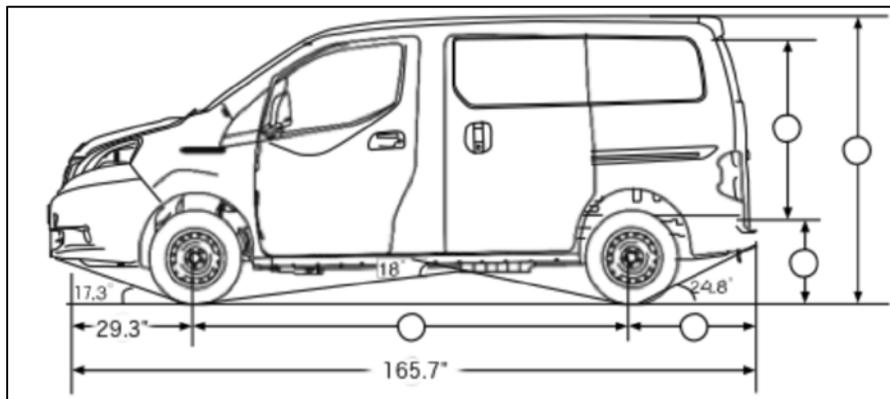
30. See U.S. ENVTL. PROT. AGENCY, LIGHT-DUTY AUTOMOTIVE TECHNOLOGY, CARBON DIOXIDE EMISSIONS, AND FUEL ECONOMY TRENDS: 1975 THROUGH 2010, at 31-33 (2010) [http://www.ecodallecitta.it/docs/news/EDC\\_dnws1091.pdf](http://www.ecodallecitta.it/docs/news/EDC_dnws1091.pdf).

### III. Where the Rubber Meets the Code

**Figure A**



**Figure B**



Notice a difference between the two diagrams above? It is not a trick question. They are indeed different. And the difference, as was quickly made apparent in the buildup to the “Taxi of Tomorrow” controversy, may be worth an immense amount of money.

Figure A depicts a Nissan NV200 whose hood measures from the leading edge of the windshield to the forward-most tip of the bumper. Figure B, in contrast, depicts one whose hood measurement stops at the forward-most tip of the “openable hood panel.”<sup>31</sup> Though the difference in methodology may appear insignificant, the resulting difference in categorizations is not. According to the

---

31. See Declaration of Donald D. Parker at ¶ 58, *Taxis for All Campaign v. N.Y. City Taxi & Limousine Comm’n*, No. 11-cv-0237 (GBD) (S.D.N.Y. Sept. 25, 2013).

Environment Protection Agency (EPA)—which defines a “van” as “having no body sections protruding more than 30 inches ahead of the leading edge of the windshield”—the distinction is enough to disqualify the NV200 in Figure A from categorization as a “van,” but not the one in Figure B.<sup>32</sup> Accordingly, even the seemingly straightforward act of measuring a vehicle’s hood was fraught with argument in the “Taxi of Tomorrow” dispute.<sup>33</sup>

But not only could neither side agree on the length of the NV200’s hood, they could not even agree on whether the EPA’s definition of “van” was authoritative under the ADA.<sup>34</sup> Indeed, the EPA’s was just one of many competing, oftentimes contradictory, definitions of “van” to be found within U.S. law—all of which held plausible claims to being definitive for the purposes of Title III.<sup>35</sup>

Faced with this uncertainty, both parties resorted to dredging up all variety of possible definitions in hopes that one favorable to their side would prove to a court’s liking.<sup>36</sup> Their sources ranged from trade magazines, to the Architectural and Transportation Barriers Compliance Board, to the Oxford Collegiate Dictionary. And as the two sides discovered, definitions favorable to each existed in abundance.<sup>37</sup>

With a scattershot of plausible definitions pointing in various directions—and trial fast approaching—the TLC eventually did what most facing millions of dollars in additional costs would be apt to do: it settled, agreeing “to phase in wheelchair-accessible yellow medallion taxicabs so that 50 percent [of its fleet would] be accessible . . . by 2020.”<sup>38</sup> But because the controversy never made its

---

32. *Id.* at ¶¶ 51, 55, 58.

33. Compare Expert Declaration of Paul V. Sheridan in Support of Plaintiffs’ Motion for Partial Summary Judgment at ¶¶ 56-61, *Taxis for All*, No. 11-cv-0237 (GBD) (S.D.N.Y. Aug. 29, 2013) (asserting that the NV200 meets the EPA’s definition of van because its hood—when measured from “the foremost body section,” specifically, the openable hood panel—“protrudes only 29.3 inches”), with Declaration of Donald D. Parker, *supra* note 31, at ¶¶ 58-59 (arguing that the NV200 Taxi does not meet the EPA’s definition of van because the plaintiffs’ expert, Sheridan, “offer[ed] no rationale for why he believe[d] that the front of the openable hood panel [was] considered to be the furthest forward part of the vehicle”).

34. Compare, e.g., Plaintiffs’ Memorandum of Law in Support of Plaintiffs’ Motion for Partial Summary Judgment, *supra* note 17, at 11-17 (asserting that Nissan NV200 is a van under multiple statutory and regulatory definitions), with Declaration of Donald D. Parker, *supra* note 31, at ¶¶ 42-45, 47, 51, 54 (asserting that NV200 is not a van because it falls under the categories of “automobile” and “passenger automobile” under 49 C.F.R. §§ 523.3-523.4 and “light-duty vehicle” as defined by the EPA).

35. See *supra* note 34.

36. See *supra* note 34; see also, e.g., Plaintiffs’ Memorandum of Law in Support of Plaintiffs’ Motion for Partial Summary Judgment, *supra* note 17, at 6, 13-14 (showing NV200 was awarded multiple trade magazine distinctions as a “van” and fell under the definition of “van” given by the Oxford, Merriam-Webster, and American Heritage dictionaries).

37. See *supra* note 36.

38. See NAT’L COUNCIL ON DISABILITY, *supra* note 27, at 275.

way to trial, Title III's exact definition of the term "van" remains genuinely unclear to this day.

#### IV. Uber and the Sleeping Giant

It is against this backdrop that Uber's transition from a driver-based to a driverless business model must be viewed. Beginning in Pittsburgh, then expanding to other cities nationwide, Uber customers who request a ride will now have a chance of being randomly paired with a self-driving vehicle that Uber purchased, brand-new, from the manufacturer.<sup>39</sup> The first hundred or so of these vehicles will be Volvo XC90s, a luxury SUV model that Uber will have outfitted with aftermarket self-driving equipment.<sup>40</sup> This means that Uber is now entering a phase in which it will be purchasing new vehicles—van-like SUVs, no less—and then retrofitting them with driverless capabilities so that they can provide what is almost certainly an ADA-covered transportation service.<sup>41</sup>

In so doing, the company may have unwittingly awakened a sleeping ADA giant which, until now, had gone undisturbed for decades. For the first time since the statute's passage, it appears that a transportation provider of national prominence will be routinely purchasing brand-new large vehicles for use in its taxi fleets—thereby potentially triggering Title III's long-dormant requirement that newly-purchased "vans" be fully accessible to individuals with disabilities.

In fact, there is a very real possibility that Uber's new SUVs would already qualify as non-exempt "vans" if the question came before a court today. But as should now be obvious from the example provided by the "Taxi of Tomorrow" controversy, the true answer to that question remains unclear to anyone without a crystal ball. What is clear, however, is that the answer will almost certainly be worth hundreds of millions of dollars to Uber and other companies like it, as the transportation industry takes its first tentative steps toward a future in which brand-new autonomous vehicles come to dominate U.S. roadways.<sup>42</sup>

---

39. Chafkin, *supra* note 2.

40. *Id.*

41. Uber has previously contested its Title III liability on grounds that it is a software platform, not a transportation service, *see* Bryan Casey, *Uber's Dilemma: How the ADA May End the On-Demand Economy*, 12 U. MASS. L. REV. (manuscript at 35), <http://ssrn.com/abstract=2766857> (forthcoming Jan. 2017), but its deployment of company-owned autonomous vehicles effaces such an argument.

42. *See supra* note 10 and accompanying text.

## V. The True Taxi of Tomorrow

Uber's bottom line aside, the disability community's stake in the resolution of this question is no less significant. More than a quarter of a century after the passage of the ADA, troubling disparities in access to transportation persist for millions of people with disabilities throughout the United States. Of the roughly 57 million Americans with disabilities,<sup>43</sup> over one third—twice as many as those without disabilities—report having inadequate transportation options.<sup>44</sup> Unfortunately, these figures only increase with the severity of the disability. “People with very severe disabilities are twice as likely to think transportation is a major problem as . . . [those] with a somewhat severe disability . . . and over three times as likely as those with a slight . . . or moderate disability . . .”<sup>45</sup> Due to major demographic shifts spurred by the aging baby boomer population, higher numbers of Americans possess a “severe” disability than ever before.<sup>46</sup> There are currently an estimated 3.6 million U.S. wheelchair users.<sup>47</sup> Of these, nearly three-fifths are sixty-five or older<sup>48</sup>—a synergistic factor that can make them doubly vulnerable to discriminatory inequities. For young and middle-aged wheelchair users, the statistics are no rosier. Only 17.4% of working-age wheelchair users have jobs,<sup>49</sup> as compared to approximately 78% of the general population,<sup>50</sup> and only 11.2% have graduated from college, compared to 21.6% generally.<sup>51</sup>

As a transportation technology that is routinely forecast as a viable alternative to car ownership—even for those otherwise unable to drive—autonomous vehicles present a prospect for the disabled community that was almost unimaginable just a decade ago: true transportation equality. In the twenty-six years since the ADA's passage, this prospect has come to represent something of a Holy Grail for disability rights activists, who have long sought in vain for a solution to one of the federal statute's most glaring shortcomings—

---

43. MATTHEW W. BRAULT, U.S. CENSUS BUREAU, AMERICANS WITH DISABILITIES: 2010, at 5 (2012), <http://www.census.gov/prod/2012pubs/p70-131.pdf>.

44. HARRIS INTERACTIVE, THE ADA, 20 YEARS LATER: KESSLER FOUNDATION/NOD SURVEY OF AMERICANS WITH DISABILITIES 115 (2010), [https://www.nod.org/downloads/best-practices/07c\\_2010\\_survey\\_of\\_americans\\_with\\_disabilities\\_gaps\\_full\\_report.pdf](https://www.nod.org/downloads/best-practices/07c_2010_survey_of_americans_with_disabilities_gaps_full_report.pdf).

45. *Id.*

46. BRAULT, *supra* note 43, at 5.

47. *Id.* at 8.

48. *Id.*

49. Roland Reznick, *Wheelchair Facts, Numbers and Figures [Infographic]*, KD SMART CHAIR (Jan. 29, 2015), <http://kdsmartchair.com/blogs/news/18706123-wheelchair-facts-numbers-and-figures-infographic>.

50. BUREAU OF LABOR STATISTICS, LABOR FORCE STATISTICS FROM THE CURRENT POPULATION SURVEY: EMPLOYMENT-POPULATION RATIO—25-54 YRS. (Dec. 1, 2016), <http://data.bls.gov/timeseries/LNS12300060>.

51. Reznick, *supra* note 49.

namely, that the ADA is adept at ensuring that buildings themselves are accessible, but not as adept at ensuring that people with disabilities can reach them in the first place.

Those who see the potential for driverless vehicles to bridge this heretofore unbridgeable gap could have no better spokesperson than Uber's own CEO, who envisions a future in which autonomous taxis drive "prices . . . so low that the per-mile cost of travel, even for long trips in rural areas, will be cheaper in a driverless [vehicle] than in a private car."<sup>52</sup> Yet, until the liability issues surrounding the ambiguously-defined "new van" provision are resolved, the question of how inclusive this future will be of individuals with disabilities will remain an open one.

### **Conclusion**

In an era increasingly defined by the legal system's inability to keep pace with rapid technological innovation, the emergence of driverless transportation models offers those who share the ADA's vision of transportation equality a rare chance at a redo. Yet, as Part III's diagram exercise demonstrates, continued evasions of liability by future transportation providers—even with a better-defined provision—may ultimately prove difficult to prevent. Whether this is the price to be paid for poorly-worded legislation or a problem in urgent need of regulatory, judicial, legislative, or even entrepreneurial resolution, however, is beyond the scope of this Essay. All this Essay can hope to offer is a call to attention: The transportation industry is driving rapidly toward the future—will people with disabilities be along for the ride?

---

52. Chafkin, *supra* note 2.