No. 17-35640

In the United States Court of Appeals
for the Ninth Circuit

Chamber of Commerce of the United States of America, et al.,
Plaintiffs-Appellants,

v.

City of Seattle, et al.,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

DEFENDANTS-APPELLEES' OPPOSITION TO EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

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INTRODUCTION

The Seattle Ordinance at issue in this appeal establishes a regulatory system to authorize the collective organization of independent contractor drivers in the for-hire transportation and taxicab industries, based on the City Council's legislative findings that such a system will serve the Seattle public's health, safety, and welfare. The Ordinance was enacted pursuant to the City of Seattle's broad and well-established grant of statutory authority from the Washington Legislature to regulate the for-hire transportation and taxicab industries to promote their safety and reliability. That statutory authority includes an explicit grant of antitrust immunity expressing the Legislature's desire to allow municipalities like Seattle to displace competition with municipal regulation within those industries.

Under the Ordinance, if drivers for a particular company elect to be collectively represented, taxicab and for-hire transportation companies must negotiate with their designated representatives about a number of issues including safe driving, vehicle equipment standards, drivers' hours and conditions of work, and payments to drivers. Seattle, Wash. Municipal Code ("SMC") 6.310.735.H.1. No agreement may take effect, however, without an affirmative finding by a city official "that the substance of the agreement promotes the provision of safe, reliable, and economical for-hire transportation services and otherwise advance[s] the public policy goals set forth in" the Ordinance. SMC 6.310.735.H.2, I.2.

The decision on appeal reflects the District Court's well-considered judgment that the Ordinance is consistent with state and federal law. Acting on an expedited briefing schedule, the District Court had earlier issued a preliminary injunction, based on its determination that the federal antitrust issues raised should be given "careful, rigorous judicial attention" before the Ordinance took effect. App. 74a. The District Court made clear, however, that its decision was premised on the need for additional time, and "emphasize[d] that [its preliminary injunction] Order should not be read as a harbinger of what the ultimate decision in this case will be when all dispositive motions are fully briefed and considered." *Id.*[1] Four months later, after full briefing on Defendants' motion to dismiss, a second oral argument, and time to consider the issues presented, the District Court held that Plaintiffs' federal antitrust claims (as well as Plaintiffs' other state and federal claims and those brought in a separate lawsuit by a group of individual for-hire drivers) failed as a matter of law, and dissolved the injunction.

No further delay in implementation of this publicly important Ordinance is warranted. This Court should deny Plaintiffs' emergency motion and permit the

[1] The District Court did not need additional time to analyze Plaintiffs' National Labor Relations Act ("NLRA") preemption claim. Rather, based on reasoning similar to that contained in its order dismissing the case, the District Court analyzed the merits of that claim and determined that Plaintiffs were unlikely to establish NLRA preemption. App. 66a-71a.

Ordinance to take effect, and the City's public policy goals to be realized.

Initially, Plaintiffs cannot demonstrate irreparable injury, a fundamental prerequisite for an injunction pending appeal. Plaintiffs rest their irreparable injury argument primarily on the speculative concern that the lists of qualifying drivers that transportation companies must produce to Teamsters Local 117—which Uber itself says are "outdated"—may inadvertently or intentionally be shared with those companies' competitors. This argument has two fatal flaws. First, Plaintiffs mischaracterize the driver information contained in those lists as confidential. The District Court properly rejected that argument because that information is already publicly available. Second, there is no evidence that inadvertent or intentional disclosure to competitors is likely. To the contrary, any list recipient is subject to major penalties if it misuses the driver information. Plaintiffs' fall-back injury argument that list disclosure is the first step in a process that might threaten the business model of companies like Uber and Lyft is similarly devoid of evidentiary support and dependent upon a series of uncertain contingencies that may never occur (and even if they did, would not occur for almost a year). Plaintiffs' failure to demonstrate any immediate irreparable injury is fatal to their emergency motion and is grounds alone to reject their request for extraordinary relief.

Separately, Plaintiffs cannot establish that they are likely to succeed on appeal. The District Court properly concluded that the Ordinance falls within the

Washington Legislature's express statutory delegation of municipal authority to regulate for-hire transportation services in a potentially anticompetitive manner, and thus satisfies the first requirement for "state action" immunity from federal antitrust law. Plaintiffs' argument that the City's regulatory authority extends only to for-hire *vehicles* and *drivers*, and that ride-referral *companies* like Uber and Lyft do not provide "transportation services" subject to the City's authority, ignores both the broad scope of the City's statutory authority to regulate the for-hire transportation industry and the reality of Uber and Lyft's businesses. And where a state legislature expressly states its intent to permit anticompetitive municipal regulation of a particular industry, as Washington has here, it need not contemplate each precise form of regulation that might be enacted pursuant to that delegation of authority, and may instead choose to provide municipalities like Seattle with the flexibility to respond to changing or unforeseen local circumstances. Plaintiffs' contrary rule disregards the Supreme Court and this Court's precedents and undermines the federalism-promoting purposes served by "state action" immunity.

Likewise, the City's ongoing supervisory role in any collective negotiations conducted pursuant to the Ordinance satisfies the "active supervision" requirement for state action immunity, because that supervision suffices to ensure that such negotiations promote the City's policy goals rather than purely private interests. Multiple circuits, including this one, have rejected Plaintiffs' argument that only

supervision by a state (rather than municipal) official satisfies that requirement.

Because both requirements for state action immunity are met here, Plaintiffs cannot be deemed likely to succeed in appealing the dismissal of their federal antitrust claims. Plaintiffs are also unlikely to reverse the District Court's rejection of their NLRA preemption claim. As the District Court recognized, independent contractors are indistinguishable from other groups excluded from NLRA coverage that this Court held may be regulated by states and localities.

For these reasons, and because the equities do not favor injunctive relief, Plaintiffs' emergency motion for an injunction pending appeal should be denied.

ARGUMENT

I. Plaintiffs have not demonstrated likely irreparable injury.

Irreparable harm is the "single most important prerequisite for the issuance of" injunctive relief. *Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 356 F.3d 1256, 1260 (10th Cir. 2004) (collecting cases; quotation omitted); *cf. Golden Gate Restaurant Ass'n v. City & County of San Francisco*, 512 F.3d 1112, 1116 (9th Cir. 2008). A party "seeking injunctive relief must proffer evidence sufficient to establish a likelihood of irreparable harm." *Herb Reed Enterprises, LLC v. Florida Enter. Mgmt., Inc.*, 736 F.3d 1239, 1251 (9th Cir. 2013).

Plaintiffs' primary theory of irreparable injury is that disclosure of a list of qualifying drivers to Local 117 will result in competitive injury. But that theory fails

at a very basic step: *No* record evidence establishes that such an injury is likely or imminent, because no evidence shows a likelihood that Plaintiffs' *competitors* will receive those lists.[2] The disclosure the Ordinance requires is not to the public at large or to one of Plaintiffs' competitors; rather, it is to an organization that must keep the information confidential or face serious penalties including fines and the potential loss of its ability to represent drivers. SMC 6.310.735.M; Declaration of Matthew Eng in Support of Defendants-Appellees' Opposition to Motion for Injunction Pending Appeal ("Eng Decl.") Ex. G.[3] Plaintiffs submit no evidence that Local 117 is likely to violate the law by disclosing the driver lists to a Plaintiff's competitor.

Instead, Plaintiffs speculate that Local 117 will "commingle" the information from various driver coordinators, which in their view "seriously *increases the risk* that the information will be misused, whether intentionally, negligently, or by hackers." Appellants' Motion for Injunction Pending Appeal ("Mot.") at 22 (emphasis added). Plaintiffs cite no supporting evidence for this conjecture, because none exists. Mere speculation is insufficient to establish irreparable harm. *See, e.g.*,

[2] The declarations filed by Plaintiffs address the competitive harms that might occur if the lists were released *to a competitor*, not if that information were released only *to Local 117*. *See, e.g.*, App. 52a ("If competing firms gain access to the information …"), 35a (similar), 42a-43a (similar).

[33] Under the Ordinance, Local 117 may use the lists *only* to contact drivers to solicit their support; it "may not sell, publish, or otherwise disseminate the driver contact information" to any other person or entity. SMC 6.310.735.E.

Americans for Prosperity Found. v. Harris, 809 F.3d 536, 541 (9th Cir. 2015) (per curiam) ("[A]llegations that technical failures or cybersecurity breaches are likely to lead to inadvertent public disclosure ... are too speculative to support issuance of an injunction."); *Earth Island Institute v. U.S. Forest Serv.*, 351 F.3d 1291, 1311 (9th Cir. 2003) ("[I]t is not enough to identify a purported injury which is only theoretical or speculative."). And even if Plaintiffs did have such evidence, irreparable injury must be *likely*, *Winter v. NRDC*, 555 U.S. 7, 40 (2008), not merely increased in risk.[4]

In arguing that disclosure will result in irreparable injury, Plaintiffs also ignore the District Court's finding that "no trade secret protections or confidentiality attached" to the basic information contained in the lists. App. 73a. In fact, the record demonstrates that virtually all that information is already publicly available. Supp. App. 176-77; *see also* Supp. App. 61-62, 64-65, 69-75, 85-90, 108, 112-13, 119, 122-23, 129-31, 136-37, 144-47, 166-67.[5] And while Plaintiffs complain that releasing these lists will force them to disclose "a list of their most high volume and

[4] Plaintiffs' claim that the City "did not contest the likelihood of irreparable injury" if driver lists were disclosed, Mot. at 22, is false. *See* Supp. App. 188-90.

[5] For example, any member of the public may access the name, telephone number, and address of all licensed for-hire drivers in the City. *See* Supp. App. 61-62, 74-75. And one court has already ordered the disclosure of information that could be reverse-engineered to determine the identities of Lyft and Uber drivers, reasoning that the "driver's identities are not secret" because "for a driver to obtain a business license ... they have to submit that license application to the City, and that information—their name, their address—is all publicly available." Supp. App. 176.

most recent drivers," Mot. at 22 (emphasis added), Uber recently told the City that the delay caused by the preliminary injunction in this case would cause the qualifying driver list to be "*outdated*." *See* Eng Decl. ¶13 & Ex. M (emphasis added).

Equally unpersuasive is Plaintiffs' claim the Ordinance will disrupt their businesses in irreparable ways. *See* Mot. at 23. Plaintiffs acknowledge that any alleged injury in this regard is necessarily speculative because the disclosure of the lists is merely "the first step in a process." *Id.* They point to the District Court's preliminary injunction ruling, but that decision cited no evidence to support Plaintiffs' assertions. *See* App. 73a. That is because *there is no record evidence* that the implementation of the Ordinance will undermine Plaintiffs' business models, much less that the "Ordinance is an existential threat" to Plaintiffs. Mot. at iv.[6] To obtain injunctive relief, evidence, not speculative rhetoric, is required.

Any such disruption could not, of course, result from the mere disclosure of qualifying driver lists, but would depend on a series of speculative events well into the future, none of which are necessarily going to occur: (1) an organizing campaign targeting a Plaintiff (or its member), as opposed to one of the nine other entities from

[6] Plaintiffs submitted declarations stating in a boilerplate and conclusory manner that "[t]his union election will severely disrupt [the company's] business." App. 230a, 235a. This assertion fails to explain *how* such disruption might occur, and so cannot support a finding of irreparable harm. *See American Passage Media Corp. v. Cass Commc'ns, Inc.*, 750 F.2d 1470, 1473 (9th Cir. 1985) (irreparable harm not shown by "affidavits [that] are conclusory and without sufficient support in facts").

which lists were requested, (2) Local 117 gaining majority support and becoming that Plaintiff's drivers' exclusive driver representative ("EDR"),[7] (3) negotiation of an agreement that undermines a "core" aspect of Plaintiffs' business model, such as the use of mobile applications or independent contractors, *and* (4) the City's approval of the agreement. Because the "chain of events" necessary for the alleged harms to arise "does not rise beyond the mere 'possibility' of harm," the Ordinance's alleged threat to Plaintiffs' business models does not warrant injunctive relief. *Int'l Franchise Ass'n, Inc. v. City of Seattle*, 803 F.3d 389, 412 (9th Cir. 2015) (citation omitted); *see also Caribbean Marine Serv., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) ("speculative injury" does not support preliminary injunction). For similar reasons, any purported harm is not "immediate." *Id.* To the contrary, even if a campaign were to begin immediately and encounter no delays, it would still be nearly a year before any Plaintiff might be required to make any changes, much less "fundamental" ones. Eng Decl. ¶24; Supp. App. 4-7.

Plaintiffs also contend that absent injunctive relief they will be "compel[led] ... to spend money educating drivers and hiring labor-relations experts." Mot. at 23. But nothing in the Ordinance *requires* these acts, and self-inflicted harms cannot support a finding of irreparable harm. *Caplan v. Fellheimer Eichen Braverman &*

[7] This is a herculean task. Uber, for example, has at least 14,000 drivers in Seattle. Dist. Ct. Dkt. No. 45-2, at 3.

Kaskey, 68 F.3d 828, 839 (3d Cir. 1995); *accord* 11A Wright, Miller & Kane, *Federal Practice & Procedure* §2948.1 (3d ed. 2013).[8]

Because Plaintiffs fail to make the requisite "clear showing" that irreparable harm is likely, *Winter*, 555 U.S. at 22, they are not entitled to injunctive relief.

II. Plaintiffs are not likely to succeed on the merits of their appeal.

A. Plaintiffs must make a "strong showing" of likely success.

The Supreme Court has explained that, to obtain an injunction pending appeal, a "stay applicant" must "ma[k]e a *strong showing* that he is *likely to succeed* on the merits." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (emphasis added). Yet Plaintiffs, the losing party in the trial court, do not even argue that they are likely to succeed on appeal, much less that they have made the "strong showing" the Supreme Court requires. Instead, they contend solely that their claims raise "serious" merits questions. Mot. at 2-3. Even if the "serious questions" preliminary injunction standard were appropriate in this context, this Court has carefully limited the application of that standard to circumstances where "the balance of hardships tips *sharply*" in favor of the moving party, *SE Alaska Conservation Council v. U.S. Army*

[8] Plaintiff's citation to *American Trucking Ass'n, Inc. v. City of Los Angeles*, 559 F.3d 1046 (9th Cir. 2009), for the proposition that implementation of a preempted law is inherently irreparable harm is misplaced. Mot. at 23. *American Trucking* involved harm in the form of "large costs" that would "disrupt and change the whole nature of [the plaintiff's] business." 559 F.3d at 1058. Plaintiffs here have provided no evidence of any such harm.

Corps. of Engineers, 472 F.3d 1097, 1110 (9th Cir. 2006) (emphasis added), the moving party's likelihood of success "cannot be resolved one way or the other at the hearing on the injunction *and* … the court perceives a need to preserve the status quo lest one side prevent resolution of the questions or execution of any judgment," *Republic of Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (en banc) (emphasis added).

None of these circumstances exists here. Plaintiffs have not shown *any* likely imminent injury, let alone the kind of threatened harm that would tip the balance of hardships *sharply* in their favor. Nothing prevents this Court from evaluating Plaintiffs' likelihood of success at this time. And unlike in *Marcos*, permitting implementation of the Ordinance pending appellate review will not "prevent resolution of th[ose] questions or execution of any judgment." *Id.* Plaintiffs must thus demonstrate a *strong* likelihood of success on appeal—which they cannot do.

B. The Ordinance is a proper exercise of Seattle's delegated authority to regulate the for-hire transportation industry and thus exempt from federal antitrust law.

The City Council enacted the Ordinance pursuant to its broad delegated authority to regulate for-hire transportation and taxicab services to promote their safety and reliability, including in ways that might restrict competition within those industries. *See, e.g.*, Wash. Rev. Code §46.72.001 (permitting municipal regulation of "privately operated for hire transportation services … without liability under

federal antitrust laws"); Wash. Rev. Code §46.72.160(6) (permitting adoption of "[a]ny" requirement needed "to ensure safe and reliable for-hire transportation service"). To permit such exercises of regulatory authority and protect states from federal overreach, the "state action" doctrine first recognized in *Parker v. Brown*, 317 U.S. 341 (1943), immunizes certain government-directed acts from antitrust liability. *Parker* is "premised on the assumption that Congress, in enacting the Sherman Act, did not intend to compromise the States' ability to regulate their domestic commerce," including in ways that would otherwise violate antitrust laws. *Southern Motor Carriers Rate Conf., Inc. v. United States*, 471 U.S. 48, 56 (1985). "[T]he free market principles espoused in the Sherman Antitrust Act end where countervailing principles of federalism and respect for state sovereignty begin." *Traweek v. City & County of San Francisco*, 920 F.2d 589, 591 (9th Cir. 1990); *see* Merrick B. Garland, *Antitrust and State Action: Economic Efficiency and the Political Process*, 96 Yale L.J. 486, 487-88 (1987) (*Parker* "represents the judiciary's effort to respect the results of the political process").

Plaintiffs are not likely to succeed in reversing the District Court's well reasoned conclusion that both requirements for *Parker* immunity are met here.

1. Clear articulation

The first, "clear articulation" element of the *Parker* immunity test requires that the conduct at issue be undertaken "'pursuant to state policy to displace

competition with regulation.'" *Mercy-Peninsula Ambulance, Inc. v. San Mateo County*, 791 F.2d 755, 757 (9th Cir. 1986) (quoting *City of Lafayette v. La. Power & Light Co.*, 435 U.S. 389, 413 (1978)).

"[I]n order to prevent *Parker* from undermining the very interests of federalism it is designed to protect, it is necessary to adopt a concept of authority broader than what is applied to determine the legality of the municipality's action under state law." *City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365, 372 (1991) ("*Omni*"). The City "need not 'be able to point to a specific, detailed legislative authorization.'" App. 83a (quoting *Lafayette*, 435 U.S. at 415)); *see also Preferred Communications, Inc. v. City of Los Angeles*, 754 F.2d 1396, 1413 (9th Cir. 1985) ("Narrowly drawn, explicit delegation is not required."). Instead, the challenged regulation must simply fall "within a broad view of the authority granted by the state." *Elec. Inspectors, Inc. v. Village of East Hills*, 320 F.3d 110, 118-19 (2d Cir. 2003).[9] The City's regulatory authority may be "defined at so high a level of generality as to leave open critical questions about how and to what extent the market should be regulated," *N.C. State Bd. of Dental Examiners v. FTC*, 135 S.Ct.

[9] In *Omni*, the Supreme Court compared this inquiry to the test for absolute judicial immunity, *see* 499 U.S. at 372, which applies unless a judge "acted in the clear absence of jurisdiction"—even if the action "was in error, was done maliciously, or was in excess of his authority." *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978) (quotations omitted); *id.* at 358-59 (judge who "err[ed] as a matter of [state] law" in granting sterilization petition retained judicial immunity).

1101, 1112 (2015), and a showing that "the State as sovereign clearly intends to displace competition in [that] particular field with a regulatory structure" is sufficient, *Southern Motor Carriers*, 471 U.S. at 64.[10]

Here, the Washington Legislature's intent to displace competition could not be any clearer: The relevant statutes expressly authorize municipal regulation of "privately operated for hire transportation services … *without liability under federal antitrust laws*." Wash. Rev. Code §46.72.001 (emphasis added); *see also* App. 82a ("The statutes ... clearly delegate authority for regulating the for-hire transportation industry to local government units and authorize them to use anticompetitive means in furtherance of the goals of safety, reliability, and stability.").

Pursuant to that authority, the City may, among other things, regulate rates ("the manner in which rates are calculated and collected") and adopt "[a]ny other requirements … to ensure safe and reliable for hire vehicle transportation service." Wash. Rev. Code §46.72.160(3), (6). As the District Court recognized, the City's authority under these provisions extends to companies like Uber and Lyft whose profits are derived entirely from selling for-hire transportation to the public (at prices

[10] This is particularly true in areas traditionally subject to regulation that burden public resources (here, public streets), such as local for-hire and taxicab transportation. *See Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 401-03 (9th Cir. 1991); *Golden State Transit Corp. v. City of Los Angeles*, 726 F.2d 1430, 1434 (9th Cir. 1984).

the companies set), and that authority broadly permits municipal regulation of *all* matters relating to the safety and reliability of for-hire transportation. App. 82a-83a, 85a-86a.

Plaintiffs and their amici contend that this broad statutory authorization is inadequate because the Legislature must expressly reference the precise form of regulation at issue when authorizing anticompetitive municipal restraints. Mot. at 5; Brief of Antitrust Law Professors ("Professors' Br.") at 6-8. But *none* of Plaintiffs' authorities involved a clear statement of legislative intent to permit the displacement of competition in a particular field like the Washington Legislature's statement here. App. 83a. Instead, in each of those cases the statute at issue authorized certain conduct but was *silent* regarding any intent to authorize displacement of competition.[11] Without any such express statement, the courts had to determine

[11] *See FTC v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216, 227-28 (2013) (general corporate powers to acquire and lease property did not authorize hospital to "act or regulate anticompetitively"); *Community Communications Co. v. City of Boulder*, 455 U.S. 40, 55-56 (1982) (city given only "general grant of power to enact ordinances"); *Columbia Steel Casting Co., Inc. v. Portland Gen. Elec. Co.*, 111 F.3d 1427, 1437 (9th Cir. 1996) (state commission authorized exchange of electrical transmission facilities and customers but not establishment of exclusive service territories); *Brown v. Ticor Title Ins. Co.*, 982 F.2d 386, 392 (9th Cir. 1992) (legislature stated it did *not* intend to discourage competition); *Springs Ambulance Serv. v. City of Rancho Mirage*, 745 F.2d 1270, 1273-74 (9th Cir. 1984) (statute authorized city to contract with company to provide emergency ambulance services, but did not address regulation of non-emergency service prices). Plaintiffs' amici also cite *Dental Examiners*, 135 S.Ct. at 1110, and *California Liquor Dealers v. Midcal Aluminum*, 445 U.S. 97, 105-06 (1980), Professors' Br. at 6-7, but the clear

whether to *infer* an intent to displace competition, and thus looked for language authorizing the specific conduct at issue.[12]

By contrast, where (as here) the intent to sanction potentially anticompetitive regulation is unambiguous, clear articulation does not *also* require that the legislature unduly restrict its agents' discretion and flexibility. To the contrary, *Parker* immunity permits delegation to the entities best situated "to deal with problems unforeseeable to, or outside the competence of, the legislature." *Southern Motor Carriers*, 471 U.S. at 64; *see also Phoebe Putney Health Sys.*, 568 U.S. at 229 ("[I]t would embody an unrealistic view of how legislatures work and of how statutes are written to require state legislatures to explicitly authorize specific anticompetitive effects before state-action immunity could apply.").[13]

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articulation requirement was not at issue in those cases.

[12] The Supreme Court's references to *Parker* immunity as "disfavored" merely reflect this insistence that legislative intent to permit displacement of competition be clear—as it is here. *See, e.g.*, *Dental Examiners*, 135 S.Ct. at 1110 (comparing state action immunity to repeals by implication).

[13] *Southern Motor Carriers* makes clear that the City's broad authority to regulate the for-hire transportation industry in ways that potentially restrict competition is sufficient to immunize regulations authorizing *collective action* by regulated parties. 471 U.S. at 64. There, the Supreme Court held that a statutory grant of authority to a state agency to set intrastate transportation rates was sufficient to immunize private motor carriers' *joint submission of proposed rates* (which took effect unless disapproved by the state agency), because the state had "made clear its intent that intrastate rates would be determined by a regulatory agency, rather than by the market," while leaving "the details of the inherently anticompetitive rate-setting process ... to the agency's discretion." *Id.* at 50-51, 63-64

In arguing that the Legislature's intent to displace competition with municipal regulation does not extend to the precise transportation services and forms of regulation at issue here, Plaintiffs and their amici primarily contend that the City's authority to enact potentially anticompetitive regulations extends only to traditional for-hire vehicles and their drivers, not to "ride-referral services" like Lyft and Uber. Mot. at 5-12; Professors' Br. at 8-9. But as the District Court concluded, Plaintiffs' argument is belied by the relevant statutes—particularly when they are construed broadly for *Parker* immunity purposes. App. 85a-86a.

The Washington Legislature did not limit the scope of the City's antitrust exemption to municipal regulation of for-hire *vehicles*. Instead, in §46.72.001, the Legislature declared "*privately operated for hire transportation service* is a vital part of the transportation system within the state," "the safety, reliability, and stability of *privately operated for hire transportation services* are matters of statewide importance," "[t]he *regulation of privately operated for hire transportation services* is thus an essential governmental function," and it is "the intent of the legislature to permit political subdivisions of the state *to regulate for hire transportation services* without liability under federal antitrust laws." Wash. Rev. Code §46.72.001 (emphases added). Washington Revised Code §46.72.160 likewise is not limited to for-hire vehicles or drivers. Rather, that statute repeatedly references "for hire vehicle *transportation services*." *See* Wash. Rev. Code §46.72.160(1), (3)

(permitting municipal regulation of "entry into *the business of providing for hire vehicle transportation services*" and "rates charged for providing for hire vehicle transportation service") (emphasis added). Under Washington law, these grants of municipal authority must "be construed liberally, rather than narrowly," while giving "considerable weight to a statutory interpretation by a party who has been designated to implement the statute"—like the City here. *Heinsma v. City of Vancouver*, 29 P.3d 709, 714 (Wash. 2001).[14]

The Legislature thus authorized regulation of *all* aspects of the "for hire transportation services" industry, not simply the direct regulation of vehicles and their drivers. Plaintiffs' further argument that Uber and Lyft do not fall within the City's regulatory authority because they are mere "digital ride-referral services" rather than "transportation services," Mot. at 6, has been rejected by every court to consider it.[15] As the District Court explained, companies like Uber and Lyft

[14] Even if the City were wrong in construing state law to authorize the Ordinance, that error would not deprive the City's regulation of antitrust immunity. In *Boone v. Redevelopment Agency*, 841 F.2d 886 (9th Cir. 1988), this Court held that the clear articulation requirement would be satisfied even if the defendant city had acted *without* state law authority by relying on its authority to develop blighted areas to develop an area of downtown San Jose that was *not* blighted. *Id.* at 891; *see also supra* note 9, *infra* note 19.

[15] *See, e.g.*, *O'Connor v. Uber Techs., Inc.*, 82 F.Supp.3d 1133, 1141 (N.D. Cal. 2015) ("Uber does not simply sell software; it sells rides. Uber is no more a 'technology company' than Yellow Cab is a 'technology company' because it uses CB radios to dispatch taxi cabs[.]"); *Doe v. Uber Techs., Inc.*, 184 F.Supp.3d 774, 786 (N.D. Cal. 2016); *Cotter v. Lyft, Inc.*, 60 F.Supp.3d 1067, 1078 (N.D. Cal. 2015).

"organiz[e] and facilitate[e] the provision of private cars for-hire in the Seattle market," and it is "disingenuous to argue that they are beyond the reach of a statute that deems 'privately operated for hire transportation services' vital to the state's transportation system and authorizes regulation thereof." App. 86a.[16] "Plaintiffs' technology and contractual relationships, which control a number of the very activities RCW 46.72.160 and RCW 81.72.210 expressly authorize municipalities to regulate, put plaintiffs squarely within the scope of local regulation under those statutes." *Id.* Plaintiffs' argument otherwise is no different from a taxicab company asserting it is a technology company or, as was unsuccessfully argued in 1933, a mere "telephone service" without responsibility for passenger injuries. *See Rhone v. Try Me Cab Co.*, 65 F.2d 834, 835 (D.C. Cir. 1933) (taxi dispatch company contended it was merely "nonprofit-sharing corporation, incorporated … for the purpose of furnishing its members a telephone service and the advantages offered by use of the corporate name" that "did not own … any … cab").[17]

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[16] As the District Court recognized, Plaintiffs' argument is of recent vintage and in tension with their Complaint. App. 86a.

[17] Plaintiffs cite a 2015 bill regarding "commercial transportation services providers." Mot. at 12-13; *see* Wash. Rev. Code §§48.177.005, 48.177.010. But as the District Court recognized, that legislation says nothing about the scope of existing Washington laws that apply to for-hire transportation, including those the City relies on here—particularly given the Legislature's decision to *delete* the original bill's provision exempting Uber and Lyft from Washington Revised Code §46.72. App. 86a-87a n.7; *see also* http://app.leg.wa.gov/billsummary?BillNumber=5550&Year=2015 (collecting bill drafts). Plaintiffs' reliance on the "Final Bill

Because Uber and Lyft profit from selling rides in for-hire vehicles to the public (at prices Uber and Lyft establish), any comparison to mechanics or landlords who happen to do business with for-hire drivers is inapt. Indeed, without objecting to the City's regulatory authority, both Uber and Lyft have complied with other City ordinances adopted pursuant to the same grant of authority involved here (including by paying fees, providing data, submitting vehicles for inspection, and applying for for-hire licenses for all of their drivers), none of which would apply to them if Plaintiffs were correct. Eng. Decl. ¶¶3-6.[18]

Plaintiffs do *not* challenge the City Council's determination that the collective negotiations permitted under the Ordinance (and subject to City approval) will "ensure safe and reliable for-hire and taxicab transportation service" within Seattle, and thus fall within its authority under Washington Revised Code §46.72.160(6). App. 116a. For good reason. As the Council explained, "Drivers working under terms that they have negotiated through a collective negotiation process are more

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Report" is similarly misplaced; that report states it "is not a part of the legislation nor does it constitute a statement of legislative intent." App. 141a.

[18] Plaintiffs contend that the Ordinance's "driver coordinator" definition would include "an untold number of companies that contract with for-hire drivers in any way," Mot. at vii, but that definition applies only to entities that work with a minimum number of drivers to "provid[e]" for-hire transportation to the public, App. 119a. Consistent with that language, the City identified twelve "driver coordinators" subject to the Ordinance, without extending the Ordinance's reach to entities that merely "contract with for-hire drivers in any way." Eng Decl. ¶10 & Ex. K.

likely to remain in their positions over time, and to devote more time to their work as for-hire drivers, because the terms are more likely to be satisfactory and responsive to the drivers' needs and concerns." App. 118a. The resulting increase in driver experience and reduction in turnover would, in the Council's view, promote the safety and reliability of for-hire and taxicab transportation. *Id.* The Council likewise determined that permitting collective negotiations would "help ensure that the compensation drivers receive for their services is sufficient to alleviate undue financial pressure to provide transportation in an unsafe manner (such as by working longer hours than is safe, skipping needed breaks, or operating vehicles at unsafe speeds in order to maximize the number of trips completed) or to ignore maintenance necessary to the safe and reliable operation of their vehicles." *Id.*[19]

Finally, Plaintiffs contend that even if the City's regulatory authority can be construed to authorize the Ordinance (as it must be), the "novelty" of Uber and Lyft's business model and of the City's regulatory response shows the Legislature did not "affirmatively contemplate" regulation of the precise form embodied in the

[19] Plaintiffs admit that it is not this Court's role to revisit these findings when evaluating whether *Parker* immunity extends to the Ordinance. Mot. at 11 ("[T]he Ordinance's validity under state law is irrelevant."); *see, e.g.*, *Boone*, 841 F.2d at 892 ("[T]he concerns over federalism and state sovereignty [underlying *Parker* immunity] dictate that [plaintiffs] not be allowed to use federal antitrust law to remedy their claim that the city and the agency exceeded their authority under state law."); *Omni*, 499 U.S. at 379 (rejecting "any interpretation of the Sherman Act that would allow plaintiffs to look behind the actions of state sovereigns").

Ordinance, and that the Ordinance fails the clear articulation requirement for that reason alone. Mot. at 12-14. But Plaintiffs' argument again relies exclusively on cases in which the Legislature had *not* affirmatively expressed an intent to permit the displacement of competition. *See supra* at 15-16 & n.11.

Plaintiffs' suggestion that the Legislature must conceive of every possible way in which delegated authority might be exercised before *Parker* immunity can attach, even where the legislature indisputably intends to permit anticompetitive municipal regulation of a field or industry, would eviscerate *Parker*'s federalism-promoting purposes by preventing states from "allocat[ing] governmental authority [to] …. municipalities to regulate areas requiring flexibility and the exercise of wide discretion at the local level." *Preferred Communications*, 754 F.2d at 1414. The clear articulation requirement does not impose such restrictions on state authority, but instead *preserves* states' ability to grant municipalities flexible and discretionary regulatory powers. *See id.* at 1413-14. As the Supreme Court has explained, *Parker* permits delegation to entities like cities that are better situated than legislature to address "*unforeseeable*" problems that might emerge within a particular area. *Southern Motor Carriers*, 471 U.S. at 64 (emphasis added).

Here, the Washington Legislature authorized potentially anticompetitive municipal regulation of the taxicab and for-hire transportation industries, while defining that authority at a "high a level of generality" to allow cities like Seattle to

exercise discretion and flexibility when choosing, based on local conditions, "how and to what extent the [for-hire transportation] market should be regulated." *Dental Examiners*, 135 S.Ct. at 1112. Seattle's "creativity in its attempts to promote the goals specified in the statute does not abrogate state immunity." App. 83a. If anything, this creativity reflects a core aspect of our federalist system of governance. "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). "[T]he fact that the state clearly contemplated and authorized regulations with anticompetitive effects in the for-hire transportation sphere" is thus sufficient to immunize the Ordinance. App. 83a.

2. Active supervision

Plaintiffs further contend that the District Court erred in holding that the Ordinance meets the second *Parker* immunity requirement—active government supervision of private parties—because a municipal (rather than Washington state) official provides the requisite supervision. The District Court correctly rejected this argument, holding that when the State has authorized a municipality to regulate in an anticompetitive manner, "the municipality (not the state) must actively supervise the conduct." App. 87a. Plaintiffs' contrary argument relies on out-of-context quotes from Supreme Court decisions, is undermined by the Supreme Court's reasoning in

many of those very decisions, disregards this Court's binding precedent, and ignores the rationale of other circuits' decisions affirming that supervision of private parties by municipal officials fulfills *Parker*'s requirements.

The active supervision requirement ensures that "the details of the rates or prices have been established as a product of deliberate state intervention, not simply by agreement among private parties." *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 634-35 (1992). That purpose is served if government officials "have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy." *Dental Examiners*, 135 S.Ct. at 1112 (quotation omitted). The Ordinance easily meets this standard: It mandates that a city official (with authority to hold hearings and gather evidence) review every proposed agreement and make an affirmative finding that the agreement furthers the City's purposes and issue a written explanation before the agreement may take effect (or authorizes the official to reject the agreement, explain in writing its deficiencies, and offer recommendations to remedy those problems). SMC 6.310.735.H.2, I.3, I.4.

In arguing that municipal officials cannot provide "active supervision," Plaintiffs rely entirely upon out-of-context quotations from Supreme Court decisions that use the term "'State' supervision." Mot. at 15. But none of those cases address the issue here: whether, when the State has expressly delegated regulatory authority to a municipality, city (rather than state government) officials may supervise private

party conduct authorized pursuant to that authority.

Plaintiffs contend that *Town of Hallie v. City of Eau Claire*, 471 U.S. 34 (1985), precludes municipal officials from exercising the requisite supervision. But *Hallie* considered whether municipal actors must themselves be actively supervised (and said no)—not whether private parties acting pursuant to municipal regulation must be supervised by state rather than municipal officials. *Id.* at 46. Rather than drawing any legally significant distinction between state and municipal supervision, the *Hallie* footnote Plaintiffs cite simply describes the general standard requiring "active state supervision." *Id.* at 46 n.10. Like other cases referencing active "state" supervision, *see* Mot. 14-16, the footnote does not use "state" as a term of art excluding municipalities, but as shorthand for the State and *all* its agents. *See* Merrick B. Garland, *Antitrust and State Action*, 96 Yale L.J. at 495 n.57 (*Hallie*'s use of "state" "is best read in its generic sense as contemplating either state or municipal supervision").

If anything, *Hallie* supports the City. In rejecting the argument that municipalities must themselves be supervised by the States, the Supreme Court explained that when private parties engage in anticompetitive conduct, "there is a real danger that [they are] acting to further [their] own interests, rather than the governmental interests of the State." 471 U.S. at 47. But "[w]here the actor is a municipality, there is little or no danger that it is involved in a private price-fixing

arrangement," and the risk the municipality will act to "further purely parochial public interests … is minimal, … because of the requirement that the municipality act pursuant to a clearly articulated state policy." *Id.* (emphasis deleted).[20]

Other Supreme Court decisions similarly explain that municipal governments are unlikely to become involved in private price-fixing arrangements because they "are electorally accountable and lack the kind of private incentives characteristic of active participants in the market," and "exercise[] a wide range of governmental powers across different economic spheres, substantially reducing the risk that [they] would pursue private interests while regulating any single field." *Dental Examiners*, 135 S.Ct. at 1112-13; *see also Phoebe Putney Health Sys.*, 568 U.S. at 226 (municipalities "have less of an incentive to pursue their own self-interest under the guise of implementing state policies"). While Plaintiffs and their amici may worry that municipalities "are more likely to be captured by local special interests," Mot. at 16, the Supreme Court has expressed no such concern—and certainly has not incorporated that concern into the *Parker* immunity test.[21]

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[20] Plaintiffs quote this language out of context in a manner that suggests that *Hallie* expressed the opposite view. *See* Mot. at 16.

[21] *Omni* does not support Plaintiffs. *See* Mot. at 16-17. *Omni* rejected a conspiracy exception to *Parker* immunity because, among other reasons, it would compromise states' ability to regulate, and "reiterate[d] that," except when the government is a market participant, "*any* action that qualifies as state action is '*ipso facto*' … exempt from the operation of the antitrust laws.'" 499 U.S. at 375-79 (ellipsis and emphases in original). Nor is there merit to Plaintiffs' contention that the Ordinance reflects a

Plaintiffs' doctrinal explanation for why municipal supervision does not suffice—that municipalities "'are not themselves sovereign,'" Mot. at 15 (quoting *Hallie*, 471 U.S. at 38)—does not support their conclusion. There is no dispute that "active state supervision" may be provided by state agencies rather than by the Legislature itself. *See, e.g.*, *Southern Motor Carriers*, 471 U.S. at 62 (supervision provided by state public service commissions). Yet state agencies—like municipalities and unlike state legislatures—are not themselves the "sovereign." *Id.* at 62-63. The very purpose of *Parker* immunity is to permit states to make regulatory decisions without congressional interference, including by choosing to use its agents—including municipal governments—to provide the required supervision. *Preferred Communications*, 754 F.2d at 1414; *Parker*, 317 U.S. at 351 (Sherman Act does not limit states' ability to act through "officers and agents").

This Circuit and two others have already held municipal supervision sufficient. Plaintiffs acknowledge *Tom Hudson & Associates, Inc. v. City of Chula Vista*, 746 F.2d 1370 (9th Cir. 1984), but contend that it "simply assumed, without affirmatively deciding," that municipal supervision of private party conduct is sufficient for *Parker* immunity. Mot. at 17. But *Tom Hudson* squarely held that a

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"too-cozy relationship between the Teamsters and certain Seattle officials." Mot. at 16. Besides its irrelevance, Plaintiffs' argument ignores the City Council's express findings regarding the Ordinance's safety and reliability benefits, and lacks a proper evidentiary basis, as Plaintiffs cite only their own briefing in the District Court.

city's supervision of private parties fulfilled *Parker*'s requirements, and it remains binding precedent. Moreover, in holding that such municipal supervision *did* suffice, *Tom Hudson* cited the very same language regarding "state" supervision that Plaintiffs quote here, which was originally set forth in a 1980 decision that *Hallie* merely quoted. *See* 746 F.2d at 1374 ("The actions of a private person are not exempt from federal antitrust laws ... unless actively supervised *by the State*.") (citing *Cal. Liquor Dealers*, 445 U.S. 97) (emphasis added). As its *California Liquor Dealers* citation makes clear, the *Tom Hudson* panel was well aware of the language upon which Plaintiffs rely, and which *Hallie* simply reiterated.

Further, the First and Eighth Circuits have reached the same conclusion in fully reasoned decisions that Plaintiffs simply ignore. *See Tri-State Rubbish, Inc. v. Waste Mgmt., Inc.*, 998 F.2d 1073, 1079 (1st Cir. 1993) (post-*Hallie*); *Gold Cross Ambulance & Transfer v. City of Kansas City*, 705 F.2d 1005, 1014-15 (8th Cir. 1983).[22] Those decisions recognized that municipal supervision provides sufficient

[22] Plaintiffs contend "[o]ther circuits have recognized *Hallie*'s impact," Mot. at 17, but cite only a Sixth Circuit order that did not address the question in depth, and simply amended a statement the panel was concerned "may not be a completely accurate statement of the law." *Riverview Investments, Inc. v. Ottawa Community Improvement Corp.*, 774 F.2d 162, 163 (6th Cir. 1985) (order). Subsequent Sixth Circuit decisions hold that where (as here) a municipal official has ultimate decision-making authority, the municipal government is the "effective decision maker" and the active supervision requirement is inapplicable. *See, e.g., Mich. Paytel Joint Venture v. City of Detroit*, 287 F.3d 527, 536-38 (6th Cir. 2002). Thus, even in the Sixth Circuit, the Ordinance would qualify for *Parker* immunity.

safeguards against abuses by private parties because municipal officials—like state government officials—are politically accountable. *See id.* at 1014. And they conclude that when state legislators decide to delegate a function to local officials in areas that involve a delegation to private actors (such as taxicab regulation, waste management, or ambulance provision), it makes no sense to then require state government employees to oversee the private actors' conduct. *See id.* at 1014-15; *Tri-State*, 998 F.2d at 1079 & n. 7 (quoting "the leading antitrust treatise").

Plaintiffs disagree with this assessment, and assert that requiring state government officials to supervise private parties acting under a municipal regulatory regime would not "unduly disrupt municipalities" or burden the State. Mot. at 17. But that reasoning ignores the ubiquitous nature of state delegation of regulatory authority to municipalities in areas where private parties engage in significant anticompetitive conduct, such as utility provision, garbage collection, ambulance and other emergency services, and taxicab transportation. In fact, this Court has consistently held that active supervision should not be applied in a manner "requir[ing] municipal ordinances to be enforced by the State rather than the City itself." *Golden State Transit*, 726 F.2d at 1434 (quotation omitted). In an indistinguishable context—regulation of "public transportation by taxicab," which California had determined "should be handled by local government"—this Court refused to construe *Parker* doctrine to interfere with California's decision to assign

regulatory and supervisory functions to municipal governments, explaining that doing so would "erode local autonomy" while requiring the State to "invest its limited resources in supervisory functions that are best left to municipalities." *Id.*; *cf. Preferred Communications*, 754 F.2d at 1414 (recognizing state's right to delegate "authority between itself and its subdivisions").

Accordingly, Plaintiffs are not likely to succeed in obtaining an appellate ruling that *Parker* immunity's "active supervision" mandate requires Washington state officials to supervise the conduct of private parties under the Ordinance.

C. Plaintiffs are not likely to succeed in appealing the dismissal of their NLRA preemption claim.

The District Court also correctly rejected Plaintiffs' argument that, in excluding independent contractors from the NLRA's coverage, Congress intended to preempt all state and local regulation of independent contractors' work relationships. App. 94a-98a; *see also* App. 66a-71a.

Plaintiffs' argument ignores this Court's authority (which the City cited below, and which is consistent with that of other circuits) establishing that when the NLRA excludes a group of workers from coverage and is otherwise silent, state and local regulation of those workers' collective organization is *not* preempted. *See United Farm Workers of Am., AFL-CIO v. Ariz. Agricultural Emp't Relations Bd.*, 669 F.2d 1249, 1257 (9th Cir. 1982) ("[W]here … Congress has chosen not to create a national labor policy in a particular field, the states remain free to legislate as they

see fit."). The *same* statutory provisions that exclude independent contractors from the NLRA's definition of "employee" also exclude, *inter alia*, agricultural laborers, domestic workers, and public employees, and Plaintiffs do not dispute that these other excluded groups are subject to state and local regulation. 29 U.S.C. §§152(2), (3). As this Court has emphasized, the exclusion of a group from NLRA coverage does *not* show Congress had any preemptive intent; this Court "draw[s] precisely the *opposite* inference," allowing state and local regulation absent contrary statutory direction. *United Farm Workers*, 669 F.2d at 1257 (emphasis added).

Machinists preemption doctrine effectuates Congress' intent to leave certain conduct *by NLRA-covered employers and employees*—the "combatants" in NLRA-covered "labor disputes"—unregulated. *See Lodge 76, Int'l Ass'n of Machinists v. Wisc. Emp't Relations Comm'n*, 427 U.S. 132, 150-51 (1976). Because independent contractors are *not* covered by the NLRA, that concern is not implicated here. *Chamber of Commerce v. Brown*, 554 U.S. 60 (2008), which held that Congress evidenced its intent to leave employer speech unregulated in labor disputes covered by the NLRA, is thus wholly inapposite. *Brown* does not stand for the proposition that work relationships that fall outside the NLRA's coverage may not be regulated by states and municipalities, and no court has held that it does.

Plaintiffs' argument is premised on comparing independent contractors to supervisors. But unlike its treatment of workers who are simply excluded from

NLRA coverage (like independent contractors), the NLRA expressly provides that supervisors may *not* be regulated by states, stating, "no employer ... shall be compelled to deem individuals defined herein as supervisors as employees *for the purpose of any law, either national or local, relating to collective bargaining*." 29 U.S.C. §164(a) (emphasis added). No similar provision preempts state or local regulation of independent contractors (or other excluded workers).

Plaintiffs nonetheless contend that Congress meant to treat independent contractors like supervisors, noting that both groups were excluded from NLRA coverage by 1947's Taft-Hartley Act. Mot. 21. Taft-Hartley, however, also added 29 U.S.C. §164(a), the provision *expressly* preempting regulation of supervisors. That Congress chose to expressly preempt state regulation of supervisors while adopting *no* similar provision regarding independent contractors shows it did not intend to treat the two groups the same, and belies Plaintiffs' characterization of the NLRA's treatment of the two groups as "two parallel exemptions [that] should be interpreted to have a similar preemptive force." Mot. 21.

This difference in statutory treatment is explained by Taft-Hartley's legislative history. As Plaintiffs now acknowledge, Mot. at 21, Congress broadly preempted state regulation of supervisors in 1947 because it concluded that supervisor unionization *undermined* the NLRA's goals. *Beasley v. Food Fair of N.C., Inc.*, 416 U.S. 653, 659-62 (1974). As the District Court explained, "[t]hese

deleterious effects would arise regardless of whether supervisors unionized under the NLRA or under state law." App. 97a; *see also* App. 70a.[23] By contrast, even assuming Congress did not believe independent contractors need collective organization, their regulation by states or localities that reach a different conclusion does not undermine any of the NLRA's goals. While Plaintiffs may *wish* Congress meant to ensure that independent contractors would "be governed by market forces, rather than collective bargaining," Mot. at 20, 22, no statutory text or legislative history supports Plaintiffs' assumption that Congress intended to *prohibit* state regulation of such matters. Rather, as with other excluded groups, "the states remain free to legislate as they see fit, and may apply their own views of proper public policy to the collective bargaining process …." *United Farm Workers*, 669 F.2d at 1257.

Accordingly, Plaintiffs are also unlikely to succeed in appealing the dismissal of their NLRA preemption claim.

III. The balance of equities and public interest do not favor injunctive relief.

The District Court correctly held that the public's interests in the implementation of this important law and realization of its beneficial effects on the provision of safe and reliable for-hire transportation services in Seattle "weigh[]

[23] Congress expressed concern that supervisor unions acted in ways subservient to unions of rank-and-file employees, causing divided loyalties. *See, e.g.*, H.R. Rep. No. 80-245, at 14-17 (1947); *Beasley*, 416 U.S. at 659-62.

heavily against the requested injunction and [are] not counterbalanced by whatever harm may arise from the disclosures required by the Ordinance." App. 110a.

When "the responsible public officials ... have already considered th[e] public interest," a court's "consideration of the public interest is constrained." *Golden Gate Restaurant Ass'n*, 512 F.3d at 1126-27 (court could conclude injunction is in public interest only "if it were *obvious* that the Ordinance was unconstitutional or preempted") (emphasis added).[24] It is axiomatic that the public has an interest in the safety and reliability of transportation services. In the City Council's legislative judgment (which cannot be second-guessed), allowing for-hire drivers to collectively negotiate will make the for-hire transportation and taxicab industries safer and more reliable. *See* App. 84a. If the Ordinance is enjoined pending appeal, the public's interest in realizing those safety and reliability benefits, and its broader interest in permitting state and local government experimentation in response to the changing economy and technology, *see New State Ice Co.*, 285 U.S. at 311 (Brandeis, J., dissenting), will go unserved for months if not years.[25] Stopping the

[24] *See also Burford v. Sun Oil Co.*, 319 U.S. 315, 318 (1943) ("[I]t is in the public interest that federal courts of equity should exercise their discretionary power with proper regard for the rightful independence of state governments in carrying out their domestic policy.") (quotations omitted).

[25] Plaintiffs contend that Ordinance's delayed implementation show that the City would face no hardship if the Ordinance were enjoined pending appeal. Mot. at 24. But the delayed "commencement date" allowed the adoption of implementation rules. Supp. App. 2; App. 239a. And the need to further delay that date arose because

City's novel response to the new problems facing Seattle's transportation industry in its tracks, based on speculative and non-existent harms, is not in the public interest. *See also Coalition for Economic Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) ("[A] state suffers irreparable injury *whenever* an enactment of its people or their representatives is enjoined.") (emphasis added).[26]

Weighing the harm to the City and the public against Plaintiffs' failure to provide any real evidence of irreparable injury makes it apparent that the equities weigh in the City's favor, and most assuredly do not tip "sharply" in Plaintiffs' favor. Any minimal harm to Plaintiffs that might occur in the absence of an injunction pending appeal cannot outweigh the significant harm to the City and the public that would accompany a further delay in implementation of this publicly important law.

CONCLUSION

For the foregoing reasons, Plaintiffs' emergency request for an injunction pending appeal should be DENIED.

Plaintiffs themselves refused to provide data the City requested, requiring the City to explore other methods to gather such information. Supp. App. 2.

[26] Nor would an injunction pending appeal preserve the status quo, as Plaintiffs contend. Mot. at 24. When a plaintiff seeks to enjoin a duly enacted law, maintaining the status quo state of affairs requires that the law be allowed to take effect, rather than being enjoined. *Golden Gate Restaurant Ass'n*, 512 F.3d at 1116 (enjoining law disrupts status quo).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2017, I electronically filed the foregoing DEFENDANTS-APPELLEES' OPPOSITION TO EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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