Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAN CLARK *et al.*,

Plaintiffs,

v.

CITY OF SEATTLE *et al.*,

Defendants.

NO. 2:17-CV-00382

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

NOTED ON CALENDAR: May 5, 2017

ORAL ARGUMENT REQUESTED

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Plaintiff Drivers Dan Clark, Tami Dunlap, Ali Hasson, Jennifer Immel, Gary Kunze, Elisabeth Lowe, Dale Montz, Abdi Motan, Frederick Rice, Michael Riebs, and Firew Teshome (collectively "Plaintiff Drivers") hereby oppose the Defendants' ("City's") Motion to Dismiss their Complaint. "In deciding such a motion, all material allegations of the complaint are accepted as true, as well as all reasonable inferences to be drawn from them.'" *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).[1] "Dismissal is proper only where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory." *Id.*

I. NLRA SECTIONS 8(B)(4) AND 8(E) PREEMPT THE ORDINANCE.

Plaintiff Drivers' preemption claims cannot be reviewed without an understanding of the complicated regulatory scheme Congress enacted to govern secondary and primary union pressure tactics in National Labor Relations Act ("NLRA") Sections 8(b)(4) and 8(e). 29 U.S.C. §§ 158(b)(4) and 158(e). The City, however, makes no attempt to explain the overall statutory framework, instead opting to sow confusion by making a series of ad hoc arguments without providing a proper context. The City also mischaracterizes Plaintiff Drivers' claims as turning on whether a union membership requirement is imposed, which is a strawman position of the City's invention. Defs' Mot. to Dismiss 8–14. Plaintiff Drivers will thus first discuss the statutory framework in Section A, *infra*, then why it preempts the Ordinance in Section B, *infra*, before turning to the City's specific arguments in Section C, *infra*.

A. Federal Statutory Framework: NLRA Sections 8(b)(4) and 8(e).

In NLRA Sections 8(b)(4) and 8(e), along with Section 8(b)(7), Congress comprehensively reg-

[1] This standard applies to those portions of the City's motion made under Federal Rule of Civil Procedure 12(b)(1) because the City did not submit any supporting factual evidence. *See Colwell v. Dep't of Health & Human Servs.*, 558 F.3d 1112, 1121 (9th Cir. 2009) (noting it is necessary for opposing party to admit evidence only after a party moving to dismiss under Rule 12(b)(1) submits evidence); *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (same). Consequently, the City's jurisdictional challenge is not a factual one, but only a facial one under which the "district court must accept as true all material allegations in the complaint," and "may not speculate as to the plausibility of the plaintiff's allegations." *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1121 (9th Cir. 2010).

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ulated the means by which unions can and cannot attempt to coerce employers and independent contractors to capitulate to union demands. *Connell Constr. v. Plumbers & Steamfitters Local 100*, 421 U.S. 616, 632–37 (1975). Section 8(b)(4) prohibits, among other things, union coercion with the object of forcing one person to cease doing business with another person. The statute states, in relevant part, that a union commits an unfair labor practice when it:

> (ii) . . . threaten[s], coerce[s], or restrain[s] any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—
>
> (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person . . . .

29 U.S.C. §§ 158(b)(4)(ii)(A), (B).

Section 8(e), in turn, makes it unlawful for unions to achieve objectives prohibited by Section 8(b)(4), namely to have an employer agree to cease doing business with another person. Section 8(e) states, subject to exemptions inapplicable here, that:

> It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible.

29 U.S.C. § 158(e). Taken together, Section 8(b)(4) prohibits unions from coercing one party to cease doing business with another, and Section 8(e) prohibits union agreements to that effect.

The statutes, however, have been construed only to prohibit union conduct that has "a secondary objective, as opposed to a primary objective of protecting the work performed by the employees of the employer bound by the contractual proviso." *Carpenters Dist. Council (Alessio)*, 310 N.L.R.B. 1023, 1025 (1993). Section 8(b)(4)(ii)(B) states that "nothing contained in this clause (B)

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shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing." 29 U.S.C. § 158(b)(4)(ii)(B). A primary objective is where a union's coercion or agreement "is addressed to the labor relations of the contracting employer vis-a-vis his own employees." *Nat'l Woodwork Mfrs. Ass'n v. NLRB*, 386 U.S. 612, 645 (1967). A secondary objective is where a union's coercion or agreement targets a third-party—i.e., where a union coerces one party to cause another party to capitulate to the union's demands. *See NLRB v. Local 825, Int'l Union of Operating Eng'rs (Burns & Roe, Inc.)*, 400 U.S. 297, 302–03 (1971).

Importantly here, a union violates Sections 8(b)(4) and 8(e) by requiring an employer only to do business with parties subject to a union's representation or contracts. *E.g.*, *NLRB v. Teamsters Local 525*, 773 F.2d 921, 924 (7th Cir. 1985). These types of requirements are known as "union signatory" requirements. They compel an employer to "cease doing business" under Sections 8(b)(4) and 8(e) because requiring an employer only to do business with contractors who accept a union's representation and contracts necessarily means that the employer cannot do business with contractors who refuse.[2] A union signatory requirement is secondary in nature because it "focuses

[2] *See Burns & Roe, Inc.*, 400 U.S. at 305 (holding the "clear implication" of a union demand that an employer bind contractors to a union agreement is that the employer cannot do business with noncompliant contractors); *Sheet Metal Workers, Local 91 v. NLRB*, 905 F.2d 417, 421 (D.C. Cir. 1990) (holding the requirement that employers extend terms of a union contact to affiliates means the employers are "obliged either to terminate their relationships with their nonunionized affiliates or to induce those affiliates to become unionized," and "[e]ither outcome is within the ambit of section 8(e)"); *NLRB v. Bangor Bldg. Trades Council*, 278 F.2d 287, 288, 290 (1st Cir. 1960) (holding a clause stating that "this Agreement binds all the subcontractors as well as the general contractor" requires a cessation of business because a subcontractor "must be compelled to unionize, or he must be displaced"); *Blasters, Drillrunners, & Miner Union (RWKS Comstock)*, 344 N.L.R.B. 751, 753–55 (2005) (holding an agreement that made compliance with a union contract a condition of engaging in a joint venture was an agreement to "cease doing business"); *Local 277, Teamsters (J & J Farms Creamery Co.)*, 335 N.L.R.B. 1031, 1031–32 (2001) (holding the requirement that employer "subcontract work only to an employer who is a signatory to a collective-bargaining agreement" is an unlawful "'union signatory' clause" because it "plainly limits subcontracting to union 'signatory' employers"); *Int'l Ass'n of Bridge, Structural & Ornamental Iron Workers (Sw. Materials & Supply, Inc.)*, 328 N.L.R.B. 934, 941 (1999) (holding an agreement making a union contract applicable to any person or firm financially controlled by an employer violates Section 8(e) because it "force[s] a cessation or alteration of business with the related firm"); *HERE, Local 274 (CHC Hotel)*, 326 N.L.R.B. 1058, 1058–59 (1998) (holding a clause making a union contract "applicable to and binding upon any successor, assignee, lessee or concessionaire" violates Section 8(e) because the employer is "prohibited from doing business with such potential lessee or concessionaire who refused to be bound by that agreement"); *Alessio,* 310 N.L.R.B. at 1025 (holding a clause requiring that an employer's affiliates be covered by the union's contract violates Section 8(e) because it will "cause Alessio to sever its ownership relationship with affiliated firms that seek to remain nonunion or to forbear from forming relationships with such firms"); *Chem. Workers Local 6-18 (Wis. Gas)*, 290

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on union affiliation by prohibiting an employer from subcontracting work to any employer not signatory to or approved by the union." *NLRB v. HERE Local 531*, 623 F.2d 61, 67 (9th Cir. 1980); *Gen. Truck Drivers, Local 957 v. NLRB*, 934 F.2d 732, 736 (6th Cir. 1991) (same). Consequently, "it is well settled that union signatory clauses violate section 8(e)." *Here Local 531*, 523 F.2d at 67; *Chi. Dining Room Emps. (Clubmen)*, 248 N.L.R.B. 604, 606 (1980) (similar).

Sections 8(b)(4)'s and 8(e)'s prohibitions apply with particular force to a union signatory requirement applicable to owner-operators of motor vehicles, which is "known as a 'hot cargo' clause because of its prevalence in Teamsters Union contracts." *Nat'l Woodwork*, 386 U.S. at 634. "'[A] primary target of the 1959 amendments'" that added Section 8(e) to the NLRA and amended Section 8(b)(4), "'was the secondary boycotts conducted by the Teamsters Union, which ordinarily represents employees not of manufacturers, but of motor carriers.'" *NLRB v. Joint Council of Teamsters No. 38*, 338 F.2d 23, 26 (9th Cir. 1964) (quoting *NLRB v. Servette, Inc.*, 377 U.S. 46, 55 (1964)). In fact, the initial Senate amendment *only* applied to motor carriers. *Nat'l Woodwork*, 386 U.S. at 636. While Congress ultimately made Section 8(e) applicable to all industries, the point remains that a genesis of the prohibition was to stop the Teamsters from coercing employers to enter into hot cargo arrangements applicable to drivers. *Id.* at 636–37.

As a result, the NLRB and courts have repeatedly held, usually in cases involving the Teamsters, that a union violates Section 8(b)(4) and/or Section 8(e) by coercing employers to enter into hot cargo agreements that require the employer only to do business with owner-operators of motor

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N.L.R.B. 1155, 1155–56 (1988) (holding a clause stating "[w]henever the Company shall contract work . . . the work so contracted shall be done by Union labor" is "a classic union-signatory clause," because it "precludes the Employer from doing business with any other employer who does not have a labor agreement with a union"); *Teamsters Local 631 (Reynolds Elec. & Eng'g Co.)*, 154 N.L.R.B. 67, 69 (1965) (holding clauses that "permit the subcontracting of unit work to companies observing all the terms of the instant contract" violate Section 8(e) because they "limit the choice of subcontractors to those which recognize and have collective-bargaining agreements with a union"); *Local 47, Teamsters (Tex. Indus.)*, 112 N.L.R.B. 923, 924 (1955), *enforced*, 234 F.2d 296 (5th Cir. 1956) (holding an agreement requiring subcontractors abide by a union contract has a "cease doing business objective" because "the Union's demand for adoption of the 'subcontractor clause' necessarily contemplated that the general contractors would be precluded by that clause from dealing with such subcontractors as might refuse to abide by the terms of the Union's contract").

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vehicles who abide by a union contract.[3] For example, in *Joint Council of Teamsters No. 42 (California Dump Truck Ass'n)*, the NLRB held that a Teamsters local violated Sections 8(e) and 8(b)(4) by entering into and seeking to enforce clauses that required contractors to make dump truck drivers abide by the Teamsters' contract. 248 N.L.R.B. 808, 817 (1980), *enforced,* 702 F.2d 168 (9th Cir. 1981), *judgment vacated on other grounds*, 459 U.S. 1193 (1983). The NLRB found that "[s]uch provisions, applied to individual [dump truck drivers] whom we have found to be independent contractors, are secondary on their face," and cited six (6) cases for that proposition, all of which involved the Teamsters. 248 N.L.R.B. at 814–15 & 815 n.18.

B. NLRA Sections 8(b)(4) and 8(e) Preempt the Ordinance.

Sections 8(b)(4) and 8(e) preempt the Ordinance because its function is to assist the Teamsters with the very conduct the statutes prohibit: coercing certain employers (driver coordinators) only to do business with owner-operators of motor vehicles (for-hire drivers) whom the Teamsters represent and are subject to its contract. The Ordinance thus violates at least one, if not both, of the NLRA's preemption doctrines, namely: (1) *Garmon* preemption, which "forbids States to 'regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits,'" *Chamber of Commerce v. Brown*, 554 U.S. 60, 65 (2008) (quoting *Wis. Dep't of Indus. v. Gould Inc.*, 475 U.S. 282, 286 (1986)); and (2) *Machinists* preemption, which "forbids both . . . the NLRB and States to regulate conduct that Congress intended 'be unregulated because [they] left [it] to be controlled by the free play of economic forces,'" *id.* (quoting *Lodge 76, Int'l Ass'n of Machinists v. Wis. Emp't Relations Comm'n*, 427 U.S. 132, 140 (1976)). As explained below, the Ordinance is preempted

[3] *See Gen. Truck Drivers, Local 957,* 934 F.2d at 736–37; *Constr., Bldg. Material, Ice & Coal Drivers, Local 221 v. NLRB*, 899 F.2d 1238, 1243 (D.C. Cir. 1990); *Teamsters Local 525*, 773 F.2d at 924; *Teamsters Local 36 v. NLRB*, 669 F.2d 759, 764 (D.C. Cir. 1981); *Local 814, Teamsters v. NLRB,* 512 F.2d 564, 566–67 (D.C. Cir. 1975); *Bangor Bldg. Trades Council,* 278 F.2d at 290; *A. Duie Pyle v. NLRB*, 383 F.2d 774, 775–78 (3d Cir. 1967); *Joint Council of Teamsters No. 38*, 338 F.2d at 30–31; *Assoc. Gen. Contractors (Cal. Dump Truck)*, 280 N.L.R.B. 698, 701–02 (1986); *Milk Drivers & Dairy Emps., Local 537 (Sealtest Foods)*, 147 N.L.R.B. 230, 235–36 (1964); *Joint Council of Teamsters No. 38 (Cal. Ass'n of Emp'rs)*, 141 N.L.R.B. 341 (1963); *Tex. Indus.*, 112 N.L.R.B. at 924.

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under *Garmon* to the extent it facilitates union conduct arguably prohibited by Sections 8(b)(4) and 8(e) or, alternatively, is preempted under *Machinists* to the extent the Ordinance facilitates union tactics permitted by those sections.

1. *Garmon* preemption requires Plaintiff Drivers to "'advance an interpretation of the Act that is not plainly contrary to its language and that has not been 'authoritatively rejected' by the courts or the Board.'" *Idaho Bldg. & Constr. Trades Council v. Inland Pac. Chapter, ABC,* 801 F.3d 950, 962 (9th Cir. 2015) (quoting *ILA v. Davis*, 476 U.S. 380, 395 (1986)). "This is not a demanding standard." *Id.* at 965. A plaintiff "need not, for example, show that the Board *will* or is even *likely* to ultimately agree with their position." *Id. Garmon* merely requires plaintiffs "'demonstrate that [the issue] is one that the Board could legally decide in [their] favor.'" *Id.* (quoting *Davis*, 476 U.S. at 395). Plaintiff Drivers easily meet this low standard, as the Ordinance empowers the Teamsters to coerce driver coordinators only to do business in Seattle with independent drivers willing to accept Teamsters' representation and contract. That is the very type of "hot cargo" arrangement Sections 8(b)(4) and 8(e) exist to prohibit.

The Ordinance authorizes conduct prohibited by Sections 8(b)(4)(ii)(A) and (B) because it empowers unions to "coerce[ ] or restrain" driver coordinators with the "object" of "(A) forcing or requiring any employer [driver coordinators] . . . to enter into any agreement which is prohibited by [Section 8(e)]" and "(B) forcing or requiring [driver coordinators] . . . to cease doing business with any other [drivers]." 29 U.S.C. §§ 158(b)(4)(ii)(A) and (B). The Ordinance does so because its certification and bargaining provisions both are a *means* for unions to coerce driver coordinators only to do business with drivers subject to that union's representation and/or contracts.

The Ordinance's certification provisions empower a union to coerce unwilling driver coordinators to accept that union as the "sole and exclusive representative of *all* for-hire drivers operating

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within the City for a particular driver coordinator." SMC § 6.310.110 (emphasis added).[4] This certification necessarily will require the driver coordinator to "cease doing business" with drivers unwilling to accept that union's representative (e.g., if the Teamsters are "the sole representative of all for-hire drivers operating within the City" for Uber, then Uber plainly cannot do business in the City with drivers not represented by the Teamsters). *See supra* note 2. Union coercion with this "cease doing business" objective violates Section 8(b)(4)(ii)(B).

The Ordinance's certification provisions also violate Section 8(b)(4)(ii)(B) for a related reason: certification of a union to be the "sole and exclusive representative of all for-hire drivers operating within the City for a particular driver coordinator," SMC § 6.310.110, will force and require *independent drivers* "to cease using . . . the products of any other producer, processor, or manufacturer [driver coordinators], or to cease doing business with any other person [driver coordinators]," 29 U.S.C. § 158(b)(ii)(B). Simply stated, if the Teamsters are the exclusive representative of all drivers who do business with Uber, then all drivers unwilling to tolerate Teamsters' representation will have to cease using Uber's driving app and cease doing business with Uber.

The Ordinance's bargaining provisions authorize conduct prohibited by Sections 8(b)(4) and 8(e) because they grant a certified union authority to coerce, through mandatory arbitration, unwilling driver coordinators to enter into a contract with that union, SMC § 6.310.735.I, that "set[s] forth terms and conditions of work *applicable to all of the for-hire drivers* employed by that driver coordinator," SMC § 6.310.110 (emphasis added). The resulting contract will be a classic "union signatory" and/or "hot cargo" agreement prohibited by Section 8(e), as driver coordinators only will be able to do business in the City with drivers who abide by that union contract. *See supra* note 3.

[4] These coercive means not only include the Ordinance's card-check process, the results of which drivers and driver coordinators are forced to accept, SMC § 6.310.735.F, but also the Ordinance's provisions empowering unions to force unwilling driver coordinators to turn over information about their drivers, SMC § 6.310.735.D, and not to take certain actions to oppose union campaigns, SMC § 6.310.735.K.

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By way of example, a Teamsters' contract that "sets forth the terms and conditions of work applicable to all of the for-hire drivers" who do business with Uber necessarily will mean Uber cannot do business in the City with drivers unwilling to abide by the terms and conditions of that contract. Union coercion with the objective of forcing or requiring an employer to enter into a Section 8(e) agreement violates both Sections 8(b)(4)(ii)(A) and (B). *See Local 32B-32J, SEIU v. NLRB*, 68 F.3d 490, 495–96 (D.C. Cir. 1995) (holding a union's demand for arbitration to compel the employer to extend the terms of a union contract to its contractors violates Section 8(b)(4)(ii)(B)); *Newspaper & Mail Deliverers, Union (N.Y. Post),* 337 N.L.R.B. 608 (2002) (same).

Union conduct the Ordinance facilitates has a prohibited secondary objective, as opposed to a primary work preservation objective, because the Ordinance seeks to extend union representation to drivers who currently are *nonunion*. Union organizing is the epitome of a secondary objective. *E.g.*, *Connell Constr.*, 421 U.S. at 632–34. "[U]nionization of . . . independent contractors," in particular, is a "secondary purpose." *Teamsters Local 525*, 773 F.2d at 924–25; *see Cal. Dump Truck Ass'n*, 248 N.L.R.B. at 814–15 & 815 n.18 (holding union signatory provisions applied to drivers "found to be independent contractors are secondary on their face" and citing six (6) cases).

To approach the issue from another angle, the Ordinance cannot authorize primary union activity because "a lawful work preservation agreement . . . must have as its objective the preservation of work traditionally performed by employees represented by the union." *NLRB v. Int'l Longshoremen's Ass'n*, 447 U.S. 490, 504 (1980). The Ordinance (1) does not "apply to drivers who are employees," Ordinance, § 6, ECF 42-1; (2) does not apply only to drivers represented by a union; and (3) does not preserve the work of any union-represented drivers from outsourcing. Thus, the Ordinance cannot be said to facilitate a primary union objective.

For these reasons, the Ordinance empowers unions to engage in conduct Sections 8(b)(4) and 8(e) arguably prohibit. An example proves the point. If the Teamsters, acting without City assis-

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tance, coerced driver coordinator Uber to agree only to do business in Seattle with drivers the Teamsters represent and who abide by its contract, that coercion and hot cargo agreement would violate Sections 8(e) and 8(b)(4), respectively. The Ordinance assists the Teamsters with this illegal course of conduct. Consequently, the Ordinance is preempted.

2. In the alternative, the Ordinance is preempted under *Machinists* to the extent that the union conduct it regulates is primary union conduct permitted under Sections 8(b)(4) or 8(e). That is because *Machinists* prohibits localities from regulating lawful "economic weapons" and means of "self-help" that Congress intended to be "unregulated" and "left to be controlled by the free play of economic forces.'" *Lodge 76*, 427 U.S. at 140, 147–48. This includes union tactics *lawful* under Section 8(b)(4). *See Local 20, Teamsters Union v. Morton*, 377 U.S. 252, 259–60 (1964) (holding federal law preempts enforcement of state law that penalized a union for persuading employers not to do business with a company in a manner that did not violate Section 8(b)(4)); *Garner v. Teamsters, Local Union No. 776,* 346 U.S. 485, 499–500 (1953) (holding NLRA's proscription on specified types of picketing implies other picketing is free from state regulation). Thus, to the extent the Ordinance facilitates union tactics permitted under Sections 8(e) and 8(b)(4) to coerce drivers and driver coordinators to do business with another under the aegis of a union's representation and contract, the NLRA still preempts the Ordinance.

A hypothetical proves this point. Section 8(b)(4)(ii)(B) does not prohibit "primary strike[s] or primary picketing." 29 U.S.C. § 158(b)(4)(ii)(B). If Seattle passed an ordinance that regulated unions primary striking and picketing, giving the striking and picketing unions statutory authority to coerce targeted employers to bend to their will—such as an ability to compel binding arbitration—that ordinance certainly would be preempted under *Machinists*. So too here, even if one assumes, *arguendo*, that a Teamsters' campaign to coerce Uber or Lyft only to do business with Teamster-represented drivers is somehow a primary activity not prohibited by Section 8(b)(4), the fact re-

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mains that under *Machinists* Seattle cannot regulate that activity in order to assist the Teamsters. Yet, that is exactly what Seattle did in the Ordinance.

3. Taken together, the Ordinance is preempted under *Garmon* to the extent it regulates secondary conduct arguably prohibited by Sections 8(b)(4) and 8(e), and is preempted under *Machinists* to the extent it regulates primary union tactics permitted under Sections 8(b)(4) and 8(e). Either way, the Ordinance's regulation of the means by which the Teamsters and other unions can coerce and restrain driver coordinators and independent drivers to accept union representation and a union contract interferes with Congress' regulation of this field.

This particularly is true given that classifying a union objective as "secondary" or "primary" is "normally [a] difficult task." *Burns & Roe*, 400 U.S. at 303. "The tapestry that has been woven in classifying such conduct is among the labor law's most intricate." *Id.* While Plaintiff Drivers submit this is an easy case, as union signatory objectives epitomize a secondary objective, *see supra* pp.4–5, the greater point is that Congress entrusted the National Labor Relations Board with this task.

On point is *Connell Construction*, which held the NLRA preempts the application of state law to union organizing tactics that implicate Section 8(e). 421 U.S. at 636. *Connell* concerned a union's attempt to coerce a construction contractor (Connell), whose employees the union did not represent, to enter into a union signatory agreement requiring it only to subcontract with mechanical firms that are parties to a union contract. *Id.* at 619–20. Connell filed federal and state anti-trust claims. *Id.* at 621. The union countered that its conduct was authorized by Section 8(e)'s construction industry exemption. *Id.* The Supreme Court made two holdings applicable here.

First, *Connell* held that a union signatory agreement with a "stranger" employer—i.e., one whose employees the union does not represent—is so repugnant to NLRA's purpose of "limit[ing] 'top down' organizing campaigns" that the agreement violated Section 8(e) notwithstanding the construction industry exemption. *Id.* at 632–34. The Court found that the NLRA's "careful limit

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on the economic pressure unions may use in aid of their organizational campaigns would be undermined seriously if the proviso to § 8(e) were construed to allow unions to seek subcontracting agreements, at large, from any general contractor," and it was unwilling to accept that "Congress [had] intended to leave such a glaring loophole in its restrictions on 'top-down' organizing," *id.* at 633. Here, the Ordinance facilitates a similar top-down organizing tactic, as it empowers unions to coerce stranger employers—namely non-union driver coordinators—only to do business with contractors subject to that union's representation and contract.

Second, *Connell* held "[t]he use of state antitrust law to regulate union activities in aid of organization must . . . be preempted because it creates a substantial risk of conflict with policies central to federal labor law," *id.* at 635–46, and could "interfere with the detailed system Congress has created for regulating organizational techniques." *Id.* at 636.[5] "Because employee organization is central to federal labor policy and regulation of organizational procedures is comprehensive, federal law does not admit the use of state antitrust law to regulate union activity that is closely related to organizational goals." *Id.* *Connell's* holding that the NLRA preempted state regulation of a union campaign to coerce an employer to impose a union's representation and agreement on its contractors dooms the Ordinance, for that is exactly what the Ordinance regulates.

C. The City's NLRA Arguments Lack Merit.

The City's various arguments are exposed as meritless when viewed in the context of the statutory framework and Plaintiff Drivers' cause of action. The arguments will be addressed in turn.

1. *Ripeness*. The City's ripeness argument is predicated on mischaracterizing Plaintiff Drivers' claims to be that the Ordinance is preempted because a future contract between the Teamsters and Uber/Lyft could contain a union membership requirement. While such a requirement would be preempted, Plaintiff Drivers' principal claim is that the Ordinance's certification and bargaining

[5] *Connell* held the NLRA did not preclude enforcement of the federal anti-trust law. 421 U.S. at 635.

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provisions empower unions to engage in conduct prohibited by Sections 8(b)(4) and 8(e), namely coercing driver coordinators only to do business in Seattle with independent drivers willing to accept the union's representation and contracts. These claims are ripe now, for Section 8(b)(4) does not require that a union actually achieve its unlawful objective. A union violates Section 8(b)(4) by engaging in coercive conduct "where . . . *an object thereof* is" prohibited by the statute. 29 U.S.C. § 158(b)(4)(ii) (emphasis added). Given that the "object[s]" of the certification process the Teamsters invoked are prohibited by Section 8(b)(4), the Plaintiff Drivers' preemption claims are ripe now.

To the extent that the City argues that a union membership agreement is required to violate Sections 8(b)(4) and 8(e), that notion is belied by even a cursory glance at the statutes. They prohibit far more than just compulsory membership agreements, such as coercion to force "any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person." 29 U.S.C. § 158(b)(4)(ii)(B); *see* 29 U.S.C. § 158(e) (similar). Moreover, no executed agreement of any sort, much less a membership agreement, is required to violate Section 8(b)(4).

The case law is to the same effect, as the phrase "cease doing business" encompasses any "attempt to cause a significant change in a secondary person's method of doing business." *Assoc. Gen. Contractors v. NLRB*, 514 F.2d 433, 437 n.6 (9th Cir. 1975).[6] For example, "[s]econdary coercion to force a neutral to add a condition . . . to its existing contractual arrangement with the primary employer is an illegal [cease doing business] objective within the meaning of [Section 8(b)(4)(ii)(A)]." *NLRB v. Carpenters Dist. Council,* 407 F.2d 804, 806 (5th Cir. 1969). That condition need not be union membership. The mere fact that union membership was required in some

[6] *See Sheet Metal Workers, Local 91*, 905 F.2d at 421 ("[T]he case law makes it clear that 'cease doing business' . . . extends to situations where a primary employer exerts any pressure calculated to cause a significant change or disruption of the neutral employer's mode of business."); *ILA, Local 1418 (New Orleans Steamship Ass'n)*, 235 N.L.R.B. 161, 168 (1978) ("It is now well established that the "cease doing business" language . . . is not to be literally read as requiring the total cancellation of a business relationship," but is "sufficiently satisfied if the conduct or contractual provision has the purpose or effect of interfering with normal business relationships.").

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hot cargo clauses held to violate Section 8(e) does not mean that membership is required to violate the statute, as the City illogically implies. Defs' Mot. to Dismiss 12 n.11. The hot cargo cases cited *supra* in note 3 involved the application of entire union collective bargaining agreements to drivers. These union signatory requirements would be just as unlawful if those contracts had not included membership clauses, as the cases cited *supra* in note 2 make clear.

2. *Independent Parties*. The City baldy asserts that "the Ordinance's requirement that driver coordinators apply Director-approved terms to all drivers is targeted at and regulates only the driver coordinator's own business, not the business of unrelated and independent third parties." Defs' Mot. to Dismiss 11. This unsupported assertion ignores that the Ordinance only applies to drivers who have an *independent contractor* relationship with driver coordinators, and not to drivers employed by them. Ordinance, § 6. This renders drivers and driver coordinators separate persons doing business with another under Sections 8(b)(4) and 8(e). It is for this reason that "[t]he finding of an independent contractor relationship, while not always conclusive, is nevertheless of great importance in determining the issue of 'secondary'/'primary' status under section 8(b)(4)(ii)(B)." *Local 419, Carpet Layers v. NLRB*, 467 F.2d 392, 399–401 (D.C. Cir. 1972); *Local 814, Teamsters v. NLRB,* 512 F.2d 564, 567 (D.C. Cir. 1975) (holding a clause that subjects drivers to a union contract "is clearly a union signatory agreement violative of sections 8(b)(4) and 8(e) if the owner-operators are not 'employees,'" but independent contractors).

The City's apparent position that driver coordinators and drivers are one entity for purposes of Sections 8(b)(4) and 8(e) is also untenable given that the NLRB has held that a union violates Section 8(e) by causing an employer to impose a union contract on its subsidiaries, affiliates, joint ventures, or financially-controlled firms.[7] Drivers and driver coordinators certainly have a far greater

[7] *See Alessio,* 310 N.L.R.B. at 1025 (addressing union signatory clause applicable to affiliates); *Sheet Metal Workers,* 905 F.2d at 421 (same); *RWKS Comstock*, 344 N.L.R.B. at 753–55 (addressing union signatory clause applicable to

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arms-length relationship than that, as drivers do business with Uber and Lyft merely by using their widely available rider-referral apps to generate business. Compl., ¶ 49.

3. *Union Standards*. The City rips a term-of-art out of context by claiming that the contract required under the Ordinance is analogous to primary "'union standards' clauses requiring the employer to subcontract only with others who agree to abide by union negotiated wages and benefits." Defs' Mot. to Dismiss 11. The City fails to mention the two fundamental ways in which they differ. First, a union standards clause does not require contractors to be represented by a union or be a party to its contract, which the Ordinance does. *See HERE Local 531*, 623 F.2d at 67 (explaining distinction between union standards and union signatory requirements). Second, union standards clauses are "work preservation clauses," as they "prohibit an employer from subcontracting work *normally performed by union employees* to any employer who pays his employees less than union wages." *Id.* (emphasis added). The Ordinance does not preserve union work from outsourcing. Its function is to facilitate union organizing by empowering unions to force driver coordinators into union signatory arrangements (or, more specifically, hot cargo arrangements) wherein driver coordinators only can do business in Seattle with drivers whom the union represents and are subject to its contracts. "[I]t is well-settled that union signatory clauses violate Section 8(e)," for such requirements "are generally viewed as an effort to expand the union's sphere of influence by impermissible secondary pressure." 623 F.2d at 67.

4. *Primary Strikes and Picketing*. The City avers that an exclusive driver representative's campaign under the Ordinance is a primary activity under *Chipman Freight Services Inc. v. NLRB*, 843 F.2d 1224 (9th Cir. 1988), which held that union picketing on behalf of independent subhaulers *the union represented* was a "primary strike or primary picketing" under Section 8(b)(4)(ii)(B)'s

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joint ventures); *Sw. Materials & Supply*, 328 N.L.R.B. at 941 (addressing union signatory clause applicable to financially controlled firms).

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proviso. *Id.* at 1224–25. *Chipman* does not help the City because the Ordinance does not authorize a "primary strike or primary picketing" by drivers a union represents. It empowers a union to impose its representation on independent drivers *who are nonunion.* That is a secondary, organizing objective. *See supra* pp. 4–5. *Chipman* itself recognized that the union in that case "may not picket against the other subhaulers" the union does not represent. 843 F.3d at 1227.

If anything, *Chipman* only supports the Plaintiff Drivers' case. First, even if the City were correct that the union conduct the Ordinance regulates is primary under *Chipman* (which it is not), that only proves the Ordinance is preempted under *Machinists* because states and localities cannot regulate, much less assist, primary union campaigns against employers. *See Garner,* 346 U.S. at 499–500; *Morton*, 377 U.S. at 259–60; *supra* pp. 9–10. Second, as discussed below, *Chipman*'s existence proves that the NLRA regulates union conduct that concerns independent-contractor drivers' relationship with parties with which they do business.

NLRA Covered Parties. The City argues that qualified driver representatives ("QDR") will not be "labor organization[s]" subject to NLRA Sections 8(b)(4) and 8(e) because their conduct will concern drivers who are not NLRA covered employees. Defs' Mot. to Dismiss 13–14. This argument is baseless. A union is a "labor organization" under NLRA Section 2(5) if it is an organization "in which *employees participate* and which exists for the purpose, *in whole or in part*, of dealing with employers . . . ." 29 U.S.C. § 152(5) (emphasis added). A union satisfies this definition, and is subject to Sections 8(b)(4) and 8(e), if some NLRA covered employees "participate" in the overall organization, irrespective of whether the individuals targeted by the union action at issue are NLRA covered employees. *IBEW (B. B. McCormick & Sons, Inc.)*, 150 N.L.R.B. 363, 370–72 (1964); *see Marriott Corp. v. NLRB*, 491 F.2d 367, 370 (9th Cir. 1974) (upholding NLRB decision that a union party to a subcontracting agreement with a non-NLRA airline carrier is still a "labor organization" subject to Section 8(e) because it also represented NLRA covered employees).

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Teamsters Local 117 easily satisfies that criteria, as it represents several units of NLRA covered employees who participate in the union, Compl. ¶ 43,[8] and files LM-2 reports with the Department of Labor as a labor organization. *Id.* Other QDR's arguably will also be labor organizations by virtue of the criteria for being certified as a QDR, *id.*, ¶ 32; *see* SMC §§ 6.310.110, 6.310.735.B, which is sufficient for preemption purposes, *see Marine Beneficial Ass'n v. Interlake S.S. Co.*, 370 U.S. 173, 182–84 (1962) (discussed *supra* p. 17).

The City's argument that a labor organization ceases being a labor organization under Section 8(b)(4) if it does not target employees ignores not only the statutory definition, but also the fact that Congress amended Section 8(b)(4) in 1959 to extend its prohibitions beyond "employees of any employer"—which the original statute only covered—to union coercion directed at "any person." *Local 3, IBEW (N.Y. Elec. Contractors Ass'n)*, 244 N.L.R.B. 357, 358–59 (1979). Because the term "person" encompasses independent contractors, 29 U.S.C. § 152(1), the NLRB repeatedly exercises jurisdiction in Section 8(b)(4) cases concerning union campaigns that involve or target persons who are not employees, such as independent contractors, including in *Chipman*, 843 F.2d 1224, and other cases. *E.g., Constr., Bldg. Material, Ice & Coal Drivers, Local 221 v. NLRB*, 899 F.2d 1238, 1243 (D.C. Cir. 1990); *Teamsters Local 36 v. NLRB*, 669 F.2d 759, 762-65 (D.C. Cir. 1981); *Cal. Dump Truck Ass'n*, 248 N.L.R.B. at 814–15. So too here, if the Teamsters, acting without City assistance, used its own devices to coerce Uber to agree only to do business in Seattle with independent drivers who are Teamsters members, it would be beyond peradventure that the NLRB could adjudicate allegations that this union conduct violated Section 8(b)(4).

The cases the City relies upon do not support its position, as they turned on the fact that the unions were acting under lawful (i.e., non-preempted) federal or state labor statutes. *See Air Line Pilots Ass'n v. NLRB*, 525 F.3d 862 (9th Cir. 2008) (addressing which federal labor law—the

[8] *E.g. Indus. Container Servs. (Teamsters Local 117)*, No. 19-RC-139080, 2015 WL 3413478 (Jan. 1, 2015).

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NLRA or the Railway Labor Act ("RLA")—governed "a dispute between a traditional railway labor organization (ALPA), acting on behalf of employees subject to the [RLA] (ASTAR pilots), and a carrier subject to the [RLA] (ABX)"); *Pac. Maritime Ass'n v. ILA Local 63*, 198 F.3d 1078, 1081 (9th Cir. 1999) (involving a union acting solely under public-sector labor law); *United Farm Workers v. Ariz. Agric. Emp. Relations Bd.*, 669 F.2d 1249 (9th Cir. 1982) (involving a union acting under state agricultural relations act). Here, a union cannot claim the NLRA does not govern its conduct *because* it is acting pursuant to the Ordinance, as the NLRA preempts the Ordinance.

On point is *Marine Beneficial Association*, where the Supreme Court held the NLRA preempted enforcement of state law to picketing by a union that almost exclusively represented individuals who were *not* NLRA covered employees, because that union arguably was a "labor organization" subject to Section 8(b)(4) by virtue of it representing or seeking to represent a few NLRA covered employees. 370 U.S. at 182–85. Here, the Teamsters represent far more than just a few NLRA covered employees. The Teamsters unequivocally is a labor organization whose hot cargo campaigns against independent-contractor drivers are subject to Section 8(b)(4). Under *Marine Beneficial Association*, the City's regulation and facilitation of that campaign is preempted.

II. THE ORDINANCE VIOLATES PLAINTIFF DRIVERS' FIRST AMENDMENT FREEDOM OF SPEECH AND ASSOCIATION.

1. The First Amendment guarantees "a right to associate for the purpose of engaging in those activities protected by [it]," such as "speech" and "petition[ing] for the redress of grievances." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984). Given that "[f]reedom of association . . . plainly presupposes a freedom not to associate," *Knox v. SEIU, Local 1000*, 567 U.S. 298, __,132 S. Ct. 2277, 2288 (2012) (quoting *Roberts*, 468 U.S. at 623), compelling association for expressive purposes infringes on First Amendment rights. *See Knox*, 132 S. Ct. at 2288–89.

The Ordinance imbues an exclusive driver representative with two authorities that impinge on

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Plaintiff Drivers' First Amendment freedoms. First, the Ordinance strips drivers of their right to speak and contract with a driver coordinator. That result is inherent in the City certifying a union to be "the *sole and exclusive* representative of all for-hire drivers operating within the City for a particular driver coordinator." SMC § 6.310.110 (emphasis added). The phrase "sole and exclusive representative" means what it says: drivers cannot deal with a driver coordinator on their own behalf or through any other representative. The parties also cannot alter the terms of their business relationship without going through the union. SMC § 6.310.735.J.3. Exclusive representation "extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees." *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967).

Second, the Ordinance authorizes an exclusive driver representative "to *negotiate*, *obtain* and *enter into a contract* that sets forth terms and conditions of work applicable to *all* of the for-hire drivers employed by that driver coordinator." SMC § 6.310.110 (emphasis added). In other words, a certified representative is empowered to speak and contract for all drivers, regardless of whether they individually approve of that speech and contract. A represented individual "may disagree with many of the union decisions but is bound by them." *Allis-Chalmers,* 388 U.S. at 180; *see 14 Penn Plaza LLC v. Pyett*, 556 U.S. 247 (2009) (holding that union representatives contractually can agree to waive individuals' right to bring discrimination claims in court).

Taken together, the City seeks to strip drivers of their right to speak and contract with another private party (Uber or Lyft), and then transfer their speech rights to an advocacy group they oppose (the Teamsters). This will impinge on drivers' First Amendment rights. As the Eleventh Circuit stated when addressing whether exclusive representation threatened an employee with associational injury: "regardless of whether [the employee] can avoid contributing financial support to or becoming a member of the union[,] . . . its status as his exclusive representative plainly affects his as-

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sociational rights," because "[i]f [the union] is certified as the majority representative of . . . employees, [the employee] will have been thrust unwillingly into an agency relationship" with a union that may pursue policies with which he disagrees. *Mulhall v. UNITE HERE Local 355*, 618 F.3d 1279, 1286–87 (11th Cir. 2010). The Supreme Court has recognized "the sacrifice of individual liberty that this system necessarily demands." *Pyett*, 556 U.S. at 271; *see Am. Commc'ns Ass'n v. Douds*, 339 U.S. 382, 401 (1950) (holding "individual employees are required by law to sacrifice rights which, in some cases, are valuable to them" under exclusive representation).

This impingement on Plaintiff Drivers' First Amendment rights is subject to at least exacting scrutiny, which requires the City to prove that its regime of mandatory representation "serve[s] a 'compelling state interes[t] . . . that cannot be achieved through means significantly less restrictive of associational freedoms.'" *Knox*, 132 S. Ct. at 2289 (quoting *Roberts*, 468 U.S. at 623); *see O'Hare Truck Serv., Inc. v. City of Northlake,* 518 U.S. 712, 714–15 (1996). Exclusive representation of *employees* "'has been sanctioned as a permissible burden on employees' free association rights,' based on a legislative judgment that collective bargaining is crucial to labor peace." *Mulhall*, 618 F.3d at 1286–87 (quoting *Acevedo-Delgado v. Rivera*, 292 F.3d 37, 42 (1st Cir. 2002)); *see Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 220–21, 224 (1977) (holding state's interest in labor peace justifies exclusive representation of employees). This labor peace interest does not save the Ordinance. The reason is *Harris v. Quinn*, 134 S. Ct. 2618, 2631 (2014).

Harris held the "labor peace" interest that justifies exclusive representation of employees did *not* apply to independent personal assistants who were not full-fledged employees. *Id.* The *Harris* Court reasoned that (1) "any threat to labor peace is diminished because the personal assistants do not work together in a common state facility but instead spend all their time in private homes," *id.*; (2) "[f]ederal labor law reflects the fact that the organization of household workers like the personal assistants does not further the interest of labor peace," as such individuals are not employees under

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the NLRA, *id.*; and (3) the union had limited authority under state law, given the absence of an employment relationship, *id.*; *see also id.* at 2636–38. So too here, drivers do not work together in a common facility, but in their own vehicles; independent contractors are not considered employees under the NLRA, 29 U.S.C. § 152(3); and there is no employment relationship. Under *Harris*, the labor peace interest does not justify the collectivization of independent drivers.

2. The City claims that its Ordinance does not inflict any First Amendment injury at all, and thus need not satisfy any form of heightened scrutiny. Defs' Mot. to Dismiss 14–16. The City's position that it is free to dictate, based on any rational basis, which advocacy group shall speak and contract for drivers is untenable, as it is both incorrect and limitless.

It is incorrect because the City's position is predicated on cases holding that the government's right to choose to whom it listens allows for exclusive representation vis-à-vis *the government*. This includes *Minnesota State Board v. Knight*, which addressed whether it is constitutional to exclude employees from union meet and confer sessions with public officials. 465 U.S. 271, 273 (1984). The Court disagreed with the *Knight* employees "principal claim that they ha[d] a right to force officers of the state acting in an official policymaking capacity to listen to them in a particular formal setting," *id.*, holding "[t]he Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy," *id.* at 283. Several recent cases have interpreted *Knight*'s holding that the government is free to choose to whom it listens, *id.* at 283–85, to mean that the government is then free to designate exclusive representatives to represent individuals in their relations with government. *See* Defs' Mot. to Dismiss 14 (citing cases). These cases have no bearing here because the Ordinance does not only dictate to whom *the City* must listen and bargain. The Ordinance dictates to whom a *private party* (driver coordinators) must listen and bargain, and further dictates who shall speak and contract for *other private parties* (drivers). The City's ability to choose whom it listens to under *Knight* does not save the Ordinance's regulation of

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how private parties speak and contract with each other.

The City's position that it can impose exclusive representation on independent drivers for any rational basis also lacks a limiting principle. If the City's position were true, the government would have free rein to force almost any private party to accept an organization as its exclusive agent for bargaining with another private party about the terms of their relationship. The government cannot possess unfettered discretion to dictate who speaks and contracts for private parties vis-à-vis other private parties, as the First Amendment reserves such rights to each individual. Mandatory associations must remain "exceedingly rare," and be "permissible only when they serve a 'compelling state interes[t] . . . that cannot be achieved through means significantly less restrictive of associational freedoms.'" *Knox*, 132 S. Ct. at 2289 (quoting *Roberts,* 468 U.S. at 623).

3. The Plaintiff Drivers' First Amendment claim is ripe for adjudication because there is no other feasible time for the Court to consider it before the drivers' suffer a constitutional injury. If the Ordinance's organizing process is allowed to move forward, the drivers could be collectivized at any time and with little notice. Their constitutional challenge to the Ordinance must be considered now, for a plaintiff need not "await the consummation of threatened injury to obtain preventive relief." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979); *see id.* at 299 (holding ripe for adjudication a union's constitutional challenge to election procedures).

This is especially true given that "[t]he very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943). These "fundamental rights *may not be submitted to vote*; they depend on the outcome of no elections." *Id.* (emphasis added). The Court should not allow the City to subject each driver's individual First Amendment freedom to choose who speaks and contracts for him or her to the tyranny of a majority vote.

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III. THE DRIVER'S PRIVACY PROTECTION ACT PREEMPTS THE ORDINANCE'S DISCLOSURE REQUIREMENTS.

1. The Driver's Privacy Protection Act ("DPPA") makes it "[1] unlawful for any person knowingly to obtain or disclose personal information, [2] from a motor vehicle record, for [3] any use not permitted under section 2721(b) of this title." 18 U.S.C. § 2722(a). The City's requirement that Uber and Lyft disclose to Teamsters Local 117 qualified drivers' personal information, including their "driver's license number" and "for-hire driver license/permit number," satisfies all three elements. FHDR-1, p. 3. In its motion, the City challenges the second element,[9] averring that Plaintiff Drivers' DPPA claim fails "because the Ordinance does not require the disclosure of personal information obtained from a state department of motor vehicles." Defs' Mot. to Dismiss 17.

DPPA's relevant provisions do not require that the information directly be obtained from a state DMV. *See Pavone v. Law Offices of Anthony Mancini, Ltd.*, No. 15 C 1538, 2016 WL 4678311, at *4 (N.D. Ill. Sept. 7, 2016).[10] Section 2722 makes it "unlawful for any person knowingly to obtain or disclose personal information, *from a motor vehicle record* for any use not permitted under section 2721(b)." 18 U.S.C. § 2722 (emphasis added). Section 2724 imposes civil liability on "any person who knowingly obtains, discloses or uses personal information, *from a motor vehicle record*, for a purpose not permitted under this chapter . . . .'" 18 U.S.C. § 2724(a) (emphasis added). These provisions do not say "from the DMV," but "from a motor vehicle record." *Id.* The City improperly attempts to insert requirements into Sections 2722 and 2724 that do not exist.

Plaintiff Drivers' reading of Sections 2722 and 2724 does not ignore Section 2721(a), which is

[9] The DPPA's first element is established given that "personal information" is broadly defined to "mean[ ] information that identifies an individual, including an individual's . . . driver identification number, name, address (but not the 5-digit zip code), [and] telephone number." 18 U.S.C. § 2725(3). The third element is established because "[t]he DPPA lists fourteen permissible purposes in § 2721(b) and *union organizing is not one of them*." *Pichler v. UNITE*, 542 F.3d 380, 396 (3d Cir. 2008) (emphasis added).

[10] The City's reliance on *Reno v. Condon* for the contrary proposition is misplaced. 528 U.S. 141 (2000). *Reno* addressed the resale or redisclosure of information an "authorized recipient" *obtained directly from the DMV* under one of the exceptions allowing disclosure of information by the DMV. *Id.* at 146; *see also* 18 U.S.C. § 2721(c). The Supreme Court's statement regarding information obtained "from a state DMV" was made in this context, and was not a restriction limiting DPPA's application to information obtained only from the DMV.

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a separate prohibition that governs conduct by "State department[s] of motor vehicles," 18 U.S.C. § 2721(a). Section 2722 and 2724, by contrast, governs the conduct of "person[s]." These prohibitions are not limited by, and do not require proof of a violation of, Section 2721(a).

Interpreting the DPPA as it is written leads to no absurd results, as the statute's numerous exceptions stated in Section 2721(b) cabin the DPPA's otherwise broad prohibitions. A restaurant's use of a driver's license handed to it to verify an individual's age, for example, is permitted by Section 2721(b)(3)(A). By contrast, there is no exception for union organizing. *Pichler v. UNITE*, 542 F.3d 380, 396 (3d Cir. 2008) (holding that a union violated DPPA by obtaining information from motor vehicle records about individuals it targeted for unionization). The disclosures required by the Ordinance thereby find no safe harbor in the DPPA's exceptions.

2. The City misstates the law when arguing the DPPA does not preempt the Ordinance unless "'it is *impossible* for a private party to comply with both state and federal requirements.'" Defs' Mot. to Dismiss, 17. That ostensible standard is a mere fragment of one of "three circumstances" where a local law is preempted under the Supremacy Clause. *English v. Gen. Elec. Co.*, 496 U.S. 72, 78 (1990). The DPPA preempts the City's Ordinance under another "circumstance"—it "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Koho v. Forest Labs., Inc.*, 17 F. Supp. 3d 1109, 1115 (W.D. Wash. 2014) (quoting *English*, 496 U.S. at 79 (internal citations omitted)). "The DPPA establishes a regulatory scheme that restricts *the States' ability* to disclose a driver's personal information without the driver's consent." *Reno v. Condon*, 528 U.S. 141, 144 (2000) (emphasis added). Consequently, the City cannot act in manners inconsistent with the DPPA.

Yet, that is what the City has done by dictating that driver coordinators must disclose to unions, for solicitation and organizing purposes, qualifying drivers' driver's license numbers, permits numbers, and associated personal information. The Ordinance requires the disclosure of personal in-

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formation in violation of the plain language of DPPA Sections 2722(a) and 2724, as well as the DPPA's purpose: "to protect the personal privacy and safety of all American licensed drivers." *Dahlstrom v. Sun-Times Media, LLC*, 777 F.3d 937, 944 (7th Cir.), *cert. denied*, 136 S. Ct. 689 (2015) (citing 140 Cong. Rec. H2526). As such, the DPPA preempts the Ordinance's disclosure requirements. *See Rios v. Direct Mail Express, Inc.*, 435 F. Supp. 2d 1199, 1205–06 (S.D. Fla. 2006) (holding the DPPA preempts inconsistent state law).[11]

CONCLUSION

For the foregoing reasons, the Court should deny Defendants' Motion to Dismiss.

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[11] On April 21, 2017, the City issued proposed amendments to FHDR-1, one of which removed the required disclosure of the driver's license number. Business regulations: For-hire Driver Collective Bargaining – Qualifying Driver and Lists of Qualifying Drivers, https://www.seattle.gov/Documents/Departments/FAS/RegulatoryServices/collective-bargaining/FHDR-1-qualifying-driver-proposed.pdf (last visited Apr. 26, 2017). Plaintiff Drivers will not address the impact that this potential amendment could have on their DPPA claim because it may not happen.