UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPEAL NO. 17-35640

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA and RASIER, LLC,
Plaintiffs-Appellants,

v.

CITY OF SEATTLE, *et al.*,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON
Case No. 2:17-cv-00370-RSL

BRIEF OF *AMICUS CURIAE*
Los Angeles Alliance for a New Economy, the National Domestic Worker Alliance, the National Employment Law Project, the Partnership for Working Families, and Puget Sound Sage
In Support of Affirmance

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CORPORATE DISCLOSURE STATEMENT AND STATEMENT PURSUANT TO FRAP 29(C)

Pursuant to Fed. R. App. P. 29(c), *amici curiae* provide the following disclosure statements:

The Los Angeles Alliance for a New Economy, the National Domestic Worker Alliance, National Employment Law Project, the Partnership for Working Families, and Puget Sound Sage are all non-profit corporations that offer no stock; there are no parent corporations or publicly owned corporations that own 10 percent or more of these entities' stock.

Pursuant to Fed. R. App. P. 29(c)(5), *amici* state that no party's counsel authored the brief in whole or in part; no party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person other than *amici curiae* or their counsel contributed money that was intended to fund preparing or submitting the brief.

Dated: December 8, 2017

Respectfully Submitted,
/s/Rebecca Smith_____
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TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

TABLE OF CONTENTS

Los Angeles Alliance for a New Economy, the National Domestic Worker Alliance the National Employment Law Project, the Partnership for Working Families, and Puget Sound Sage, (collectively *"Amici"*) submit this brief in support of defendants-appellees, the City of Seattle, et.al.

STATEMENT OF INTEREST OF *AMICI CURIAE*

This brief is submitted on behalf of workers' rights organizations with a keen interest in this case with members and constituents in Washington, California and across the country. It is filed pursuant to Fed. R. App. P. 29(a)(2) with the consent of appellants Rasier, LLC. and the U.S. Chamber of Commerce.

Amici are local, regional and national non-profit advocacy organizations that engage in a range of legal and policy advocacy, community education and technical assistance for low-wage workers, with institutional goals of supporting worker organizing and economic security for workers and their families. This work informs our position supporting the City of Seattle and the workers' interests in coming together to pursue better working conditions.

The Los Angeles Alliance for a New Economy (LAANE) is a nationally recognized advocacy organization dedicated to building a new economy for all. Combining research, public policy, and strategic organizing of broad alliances, LAANE promotes a new economic approach based on good jobs, thriving

communities, and a healthy environment. LAANE litigates the employment rights of other "gig" workers, including port truck drivers.

The National Domestic Workers Alliance (NDWA) is the nation's leading advocacy organization advancing the dignity, rights and recognition of domestic workers. Powered by sixty-four affiliates, NDWA advances the rights of child care workers, housecleaners and direct care workers. Domestic workers are excluded from basic federal labor protections, such as the National Labor Relations Act. NDWA fights for equal and improved treatment for domestic workers in every sector.

The National Employment Law Project (NELP) is a non-profit legal organization with nearly 50 years of experience advocating for the employment and labor rights of low-wage workers. NELP seeks to ensure that all workers have the opportunity to come together and bargain with the businesses they work for. NELP has litigated directly and participated as amicus in numerous cases before this court and others, addressing low-wage workers' access to core labor standards and employment rights.

The Partnership for Working Families ("PWF") is a national network of seventeen regional affiliate organizations that support innovative solutions to the nation's economic and environmental problems. PWF provides original research, advocacy, legal support, and strategic communications to its affiliates and allies,

who advance policies at the city, state, and federal level that improve lives and create quality jobs and healthy, sustainable, and democratic communities.

Puget Sound Sage is a non-profit policy innovator in the Seattle urban region with a mission to grow communities where all families can thrive. For over 10 years, Sage has developed and advanced local legislation that improves working conditions for low-wage workers, workers of color, immigrants and refugees. This includes minimum labor standards, workplace democracy and collective bargaining. Sage has researched and written extensively about the public benefits of collective bargaining for TNC drivers.

INTRODUCTION

While Appellants argue that Transportation Network Company (TNC) drivers are independent business enterprises and that the companies are "ride referral" services, the reality is that Uber and Lyft are transportation service companies that exercise comprehensive control over the for-hire services they provide. The companies' transportation service operations rely on exploiting a vulnerable and largely unregulated workforce that is subject to poverty wages and poor working conditions, and that currently has no meaningful ability to affect the terms drivers must accept to provide rides. The TNCs exercise complete control over both the for-hire transportation market created by their applications and their

contractual relationships with their drivers. In these circumstances, permitting workers to seek to organize and bargain collectively is sensible policy.

Further, contrary to Appellants' argument, such a structure is entirely compatible with Uber and Lyft's business model. Collective bargaining has been shown to improve worker retention and health and safety standards, in turn creating positive effects for companies and the general public. Unsurprisingly, then, other sectors in which "flexibility" is key have also built collective bargaining structures and engaged in collective bargaining.

Finally, encouraging state and local policy innovations that address the labor challenges of the modern economy – like the ordinance at issue here – is good public policy. The Appellants' extreme NLRA preemption arguments regarding independent contractors are not only unsupported by the statute and legislative history, they would have the effect of severely limiting innovative policy efforts by states and localities.

The Seattle City Council was right to conclude that drivers needed a collective bargaining structure in order to balance a stark inequality of bargaining power and provide safe and reliable transportation to the people of Seattle.

ARGUMENT

I. Uber and Lyft are transportation service companies that exercise significant control over the services they provide.

Transportation network companies (TNCs) Uber and Lyft provide services whereby individuals in need of transportation can be paired, via a software application on their smartphone, with an available driver, be picked up by the available driver, and ultimately be driven to their final destination. The companies receive credit card payments from the rider at the end of the ride, and remit a cut of that amount to the driver who transported the passenger. *O'Connor v. Uber Technologies, Inc,* 82 F.Supp.3d 1133, 1135 (N.D. Cal. 2015), *Cotter v. Lyft, Inc,* 60 F.Supp.3d 1067, 1071-2 (N.D. Cal. 2015).

Contrary to the companies' allegations that they are mere "ride referral" facilitators or connectors of drivers and customers, Appellants' Opening Brief, p. 6, the companies unilaterally set all fundamental components of the operation vis a vis their workers and customers. They control the fares charged to customers, the terms of agreement with customers, driver compensation, the routes assigned to drivers, and all contact between customers and drivers.[1]

[1] Uber's pervasive control over the marketplace is illustrated by the company's "Community Guidelines," which contain rules for drivers on safety, supervision of children, the appropriate environment for riders that must be maintained, discrimination, and twelve separate reasons that might result in a driver's "deactivation," including for low ratings from passengers, high cancellation rates, and low acceptance of assigned rides. Uber Community Guidelines,

The contracts between drivers and the companies are "take it or leave it" contracts drafted by the companies, with no opportunity for drivers to negotiate terms. And the contracts change often. The technology that the TNCs use allows for instantaneous, unilateral control over core contractual terms: drivers must agree to new terms of service, changed at the whim of the companies, on a regular basis in order to continue driving for the companies. Ryan Calo & Alex Rosenblat, *The Taking Economy: Uber, Information, and Power,* Colum. L. Rev., Vol. 117, 2017 (March 9, 2017), *available at* https://goo.gl/YdK1t6. For example, as reported by Uber drivers, often in the midst of working a lengthy contract document will appear on the app on their phone. The driver is notified that they must click "Accept" to the new terms, or they are no longer allowed to work. Alemayehu Dec. ¶ 5; Creery Dec. ¶6, (filed in *Rasier v. City of Seattle*, Case No. 17-2-00964-4 (King County Super. Ct. May 15, 2016)).[2] As of 2013, Lyft also required drivers to

https://goo.gl/HRHVD4 (last visited December 5, 2017). A copy of its 2015 driver contract, posted online, is 21 pages long and includes many additional terms regarding vehicle requirements, fares, the company's service fee, required insurance and other terms of service. https://goo.gl/Uf7VDz (last visited December 5, 2017). By contrast, on Craigslist or Ebay or other marketplaces, people sell their own goods and services for prices they set, to customers of their own choosing.

[2] *Amici* ask the court to take judicial notice of findings in pleadings and decisions of other courts and agencies, as well as declarations filed in certain cases, in order to bring realistic portrayals of driver experience to the court's attention. *Harris v . County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (noting that courts may take judicial notice of matters of public records, including documents on file in

sign extensive Terms of Service and Rules of the Road. *Cotter,* 60 F.Supp.3d at 1071-2 (N.D. Cal. 2015).

Drivers lack even the most basic information about who they are picking up and where they are taking that person. Drivers do not know where they are expected to take a passenger until the rider enters the car. Alex Rosenblat & Luke Stark, Algorithmic Labor and Information Asymmetries: A Case Study of Uber's Drivers, International Journal of Communication 10 (2016) 3764, *available at* https://goo.gl/UKbsK3; Michel A. Salo, *Uber & Lyft drivers CAN'T tell where you're going. At all.*, MEDIUM, Aug. 29, 2016, https://goo.gl/oTCHpY.

The companies unilaterally set the varying prices for services and drivers are not even allowed to take advantage of a key hallmark of independent businesses: They cannot establish relationships with customers. Uber's Handbook indicates that soliciting business from a client is a "Zero Tolerance" offense that may result in immediate suspension. *O'Conner,* 82 F.Supp.3d 1133, 1142 (N.D. CA 2015).

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federal or state courts, and taking judicial notice of declaration filed in prior litigation) (citations omitted); *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (courts may take judicial notice of matters of public record outside the pleadings, including pleadings filed in a different lawsuit).

II. The companies' transportation service operations rely on exploiting a vulnerable and largely unregulated workforce that is subject to poverty wages and poor working conditions.

The companies are international transportation operations providing extensive services across the Seattle area. These companies, however, subject drivers to poverty wages and poor working conditions.

Researchers and individual workers report extremely low wages. In Seattle, news reports cite drivers who state that real wages after deductions can be less than $3 an hour. Puget Sound Sage, *Driving Public Good: How Collective Bargaining can Increase Reliability & Safety in the Seattle For-Hire Transportation System*, (2015) 12, *available at* https://goo.gl/giDdPK. *See also*, *e.g.*, Danielle Paquette, *She was Pregnant and Broke. She Signed Up for Uber – and fell into debt*, THE WASHINGTON POST, April 8, 2017, https://goo.gl/jKVDEf; Maya Kosoff, *Uber Drivers Speak Out: We're Making a Lot Less Money than Uber is Telling People*, BUSINESS INSIDER, Oct. 29, 2014, https://goo.gl/LmXxHn; Seth Sandronsky, *I'm Making Only $2.64 an Hour Working as an Uber Driver*, CAPITAL AND MAIN, Sep. 23, 2015, https://goo.gl/ZEQUNn; and Caroline O'Donovan, *How Much Uber Drivers Actually Make per Hour*, BUZZFEED NEWS, June 22, 2016, https://goo.gl/EgvJWv. These accounts call into question or flatly contradict Uber's accounts of a driver's hourly wage. Notably however, even by Uber's own

assessment, a driver within the "typical range" might earn $12.54 an hour – below Seattle's minimum wage for large employers.[3]

Wages can also fluctuate wildly, creating a precarious workforce with high income instability. The companies can and do change fares without warning, and these changes are imposed unilaterally. In 2013, Lyft took a 20% cut of drivers' wages. *Cotter v. Lyft*, 60 F.Supp.3d at 1071 (N.D.C.A. 2015). Uber's cut has varied from 20% to 25% to 30%, and even as much as 39%, when considering various fees charged to customers. *O'Connor,* 82 F.Supp.3d at 1142; Case No. 016-23858 (NY Unemployment Insurance Appeals Board, Jun. 9, 2017); The Rideshare Guy: A Blog and Podcast for Rideshare Drivers, *Uber Increases Booking Fee and Effective Commission*, February 22, 2017, https://goo.gl/aaJ99h. In early 2016, Uber cut fares in over 100 cities across the U.S., such that drivers either saw a sudden drop in income – or had to drive more in order to earn the same amount they had been earning previously. Sage Lazarro, *Uber Drivers Plan Boycott After Fare Cuts Slash Their Earnings to Below Minimum Wage*, OBSERVOR, Jan. 19,

[3] According to Uber, the "median driver" in Seattle earns an hourly wage between $19 to $21 before expenses, and a "typical expense range" is between $2.94 and $6.46 per hour. Thus even by Uber's own estimates as to average gross wage and expenses (e.g. vehicle, insurance, gas), drivers at the low end of Uber's estimated range take home $12.54 per hour. Uber blog, *A look at driver earnings in Seattle,* Sep. 20, 2017, https://goo.gl/V6DpYb (last visited December 5, 2017). Seattle's minimum wage is $15 per hour for large employers like Uber. SMC 14.19.005 et seq.

2016, https://goo.gl/wroGRP; Rosenblat & Stark at 3764. For drivers in Seattle, rates per mile have been reduced from $1.85 in 2013 to $1.35 in 2017. Dec. Creery, ¶3. Filed in *Raisier, LLC v. City of Seattle,* No. 17-2-00964-4 (King County Superior Court, 2017).

By unilateral decision, the companies pass business costs onto workers and do not provide workers the benefits that are commonly associated with work. In addition to shouldering expenses such as the purchase of vehicles, vehicle insurance, fuel and maintenance, Uber does not provide its drivers with vacation, sick, health or fringe benefits. Case No. 016-23858, (NY Unemployment Insurance Appeals Board, Jun. 9, 2017) 5, *available at* https://goo.gl/hCyMYz. Nor do the companies pay into social insurance systems like workers' compensation, unemployment insurance, and social security.

Although these jobs can be highly volatile, the companies do not pay unemployment insurance taxes. This means that when drivers experience reduced demand or are deactivated by the TNCs, drivers have no income support via the unemployment insurance system. Nat'l Emp't Law Project, *Making Unemployment Insurance Work for On-Demand Workers* (Jan. 11, 2017) 2, https://goo.gl/UqZWk7.

Finally, while for-hire transportation is one of the most dangerous jobs in the country, the companies do not pay into workers' compensation systems in the vast

majority of states. Taxi drivers and chauffeurs are killed on the job at a rate five times higher than the average for all workers. Nat'l Emp't Law Project, *On-Demand Workers Should Be Covered by Workers' Compensation* (June 21, 2016) 1-2, https://goo.gl/ZvtMVB. There have been horrific examples: an Uber driver stabbed in the face and neck during a robbery; a passenger who assaulted a Lyft driver after being asked not to smoke in the vehicle; a former police officer who attacked an Uber driver with racial slurs, and a drunk executive assaulting a driver who asked for a destination, caught dramatically on video. Puget Sound Sage, *Driving Public Good* 18. Transportation and workplace violence incidents can result in serious, sometimes catastrophic injuries with accompanying lost work time and growing medical bills. *On-Demand Workers Should Be Covered by Workers' Compensation* 1-2. TNC drivers and their families are left to shoulder the burden of workplace injuries and fatalities on their own.

III. Collective negotiations and improved working conditions are compatible with Uber and Lyft's business models and may improve productivity and retention.

A. There is no incompatibility between a "flexible" business model and collective negotiations.

Contrary to the claims of Uber and Lyft, hostility to collective negotiations is not fundamental to what they call their "flexible" business model. There are both historical and contemporary examples of industries where work is paradigmatically "flexible," but workers are nonetheless protected by collective bargaining

agreements. Writers who collectively bargain while maintaining flexibility are an historical example of the compatibility between collective bargaining rights and "flexible" employment. Writers in the Hollywood movie industry have bargained collectively for eighty years, in an occupation which is paradigmatically "flexible" and entrepreneurial. Catherine Fisk, *Hollywood Writers and the Gig Economy*, U. Chi. Legal. F., (2017), *available at* https://ssrn.com/abstract=2858572. Musicians, the original "gig" workers, have long engaged in collective bargaining. Nell Abernathy and Rebecca Smith, Nat'l Emp't Law Project and the Roosevelt Institute, *Work Benefits: Ensuring Economic Security in the 21st Century* (2017) 13, https://goo.gl/FV2Xpc.

More recently, staff at multiple digital media companies, including Vox Media, Vice Media, Salon, ThinkProgress, and Gawker Media have entered collective bargaining relationships. Daniel Marans, The Huffington Post, *Vox Media Employees Announce Plans to Unionize,* Nov. 17, 2017, https://goo.gl/joxWv5 (collecting examples of recent unionization efforts by the Writers Guild in digital media workplaces); Jonathan Handel, *Gothamist and DNAInfo vote to Unionize with Writers GuildEast*, HOLLYWOOD REPORTER, Oct. 27, 2017, https://goo.gl/p67WzV. These examples, including both app-based and digital employers, and long-standing historical examples, demonstrate that

collective bargaining arrangements are entirely compatible with modern "flexible" workplaces.

In the on-demand economy itself, other companies have proven that there is no incompatibility between providing workers with truly flexible work arrangements and the potential for collective bargaining. The cleaning company Managed by Q, and the package delivery company Shyp have chosen to potentially grant their employees collective bargaining rights, by transitioning workers from independent contractor status to W-2 employee status. Managed by Q offers employees flexible schedules, while classifying workers not as independent contractors, but as employees with potential collective bargaining rights. Kia Kokolitcheva, *Workers At This Startup Get A Perk That Most In The On-Demand Economy Don't*, FORTUNE, June 18, 2015, https://goo.gl/sFi4iq; Davey Alba, *Shyp Makes Couriers Into Employees Before Its Too Big To Change*, WIRED, July 1, 2015, https://goo.gl/RYZ9cu.

B. Collective negotiations can produce positive effects for companies and the public, including improved worker retention and health and safety standards.

Collective negotiations, including collective bargaining, can bring economic benefits to drivers, firms, and the public at large. As the Seattle City Council stated in its legislative findings, collective negotiations between drivers and the companies "will enable more stable working conditions and better ensure that

drivers can perform their services in a safe, reliable, stable, cost-effective, and economically viable manner." This in turn benefits members of the public "who rely on safe and reliable for hire transportation to meet their transportation needs." Seattle Ordinance 124698, § 1(I).

Financial pressure can incentivize drivers to provide transportation in an unsafe manner, for example, working longer hours than is safe, skipping needed breaks, operating vehicles at unsafe speeds to complete more trips, or foregoing potentially costly vehicle maintenance. *See* Seattle Ordinance 124698, § 1(I). Decades of research show that gains brought by collective bargaining agreements include higher wages, higher likelihood of receiving benefits, such as health insurance and sick leave, and higher quality benefits. Driving Public Good 20; Economic Policy Institute, *The Benefits of Collective Bargaining* (2015), https://goo.gl/mFodVn.

Unsurprisingly, increasing the quality of jobs also improves worker retention, which is associated with increased safety. Driving Public Good 21. Drivers who have more experience improve the safety and reliability of services and reduce the safety and reliability problems created by frequent turnover. Seattle Ordinance 124698, § 1(I). High driver turnover, also called "churn," appears to be an issue for Uber and Lyft. A recent report finds that only 4% of Uber drivers remain on the platform a year after beginning work. Chantel McGee, *Only 4% Of*

Uber Drivers Remain On The Platform A Year Later, Says Report, CNBC, Apr. 20, 2017, https://goo.gl/b8EXnh. Ensuring more experienced drivers are on the road improves both safety and reliability for the whole for-hire system.

Multiple studies have found that collective bargaining significantly increases the safety of motor carrier operations. Thomas Corsini, et al., *Safety Performance Difference Between Unionized and Non-Unionized Motor carriers*, Transportation Research Part E: Logistics and Transportation Review, 48(4) (Elsevier, 2012), https://goo.gl/jxC2nT; Kristin Monaco and Emily Williams, *Assessing the determinants of safety in the trucking industry*, Journal of Transportation and Statistics, Vol (3)1 (Bureau of Transportation Statistics, 2000), https://goo.gl/dNGFD4. Similar findings have been made in other industries as well. For example, collective bargaining by nurses has led to improved patient outcomes. Driving Public Good 21. As found by the Seattle City Council, collective negotiations can remedy the "safety and reliability problems created by frequent turnover in the for-hire transportation services industry." Seattle Ordinance 124698, § 1(I).

IV. State and local experimentation in addressing the challenges of the 21st century is good public policy and Plaintiffs' extreme NLRA preemption arguments would severely limit innovative policy efforts.

Plaintiffs argue that with the NLRA, "Congress intended independent contractors to be governed by market forces, rather than collective bargaining,"

such that any regulation by states and cities of independent contractors, like the instant Ordinance, is preempted by the NLRA. Opening Brief of Appellants, p. 53. Plaintiffs' extreme stance regarding preemption under *Machinists v. Wisc. Employment Relations Comm'n,* 427 U.S. 132 (1976) is not only unsupported by the statute, it would also have the practical effect of creating a new and indeterminate NLRA preemption test that would improperly chill the efforts of state and local policymakers to move innovative policy approaches, addressing the labor challenges of the modern economy.

It has become a truism among labor policy scholars that the economy and employment relationships in the United States have undergone a profound transformation in recent decades, and that existing workplace legal regimes have failed to address the challenges of the 21st century. *See*, *e.g.*, Benjamin Sachs, *Labor Law Renewal*, 1 Harv. L. & Pol'y Rev. 375, 375-376 (2007), *available at* https://goo.gl/CV42Am (referring to a "scholarly consensus" that federal labor law is "dysfunctional" and "ill-fitted to the contours of the contemporary economy"); Katherine V.W. Stone, *Legal Regulation of the Changing [Employment] Contract*, Cornell J. L. & Pub. Pol'y, Vol. 13, Iss. 3, Article 1 (2004), *available at* https://goo.gl/bQ9e5b (arguing "[t]he former regulatory structure… is not well-suited to the newly emerging employment system" and these economic changes are "the demise of the New Deal system"); David Weil, THE FISSURED WORKPLACE:

WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT (2014) (arguing that current workplace laws fail to properly address the contingent and "fissured" employment structures that have increasingly prevailed since the 1980s).

States and localities are well-positioned to advance the policy experiments that will be crucial to creating legislative solutions and tackling the economic challenges of these new business models. As Justice Brandeis famously described, states may serve as "a laboratory" for policy experimentation, and denial of this experimentation "may be fraught with serious consequences to the nation." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). Cities and localities perform a similar function in advancing innovative policy proposals. *See*, *e.g.*, Paul Diller, *Intrastate Preemption*, B.U. L. Rev., 87:1113 (2007) (arguing for cities and localities as laboratories and compiling examples of cities advancing innovative policies in a variety of fields); Richard Schragger, *Is a Progressive City Possible? Reviving Urban Liberalism for the Twenty-First Century*, (July 1, 2013), Harv. L. & Pol'y Rev., Vol. 7, p. 901 (2013) (arguing for and describing city-based efforts to address economic inequality).

Adopting the Plaintiffs' extreme preemption arguments would have drastic consequences for policy experimentation addressing the very models they are creating. First, the Chamber's arguments regarding NLRA preemption of

independent contractor relations are extremely broad and conceivably would preempt even very rudimentary regulatory functions. For example, a city could conceivably be barred even from setting up a procedure for collecting complaints from drivers, or creating a forum for citizens and drivers to collectively raise their concerns regarding for-hire services. Second, and more importantly, a novel and unpredictable NLRA preemption standard would have a chilling effect on states and localities seeking to pursue new policy approaches.

Amici have extensive experience working with state and local lawmakers across the country, and we know firsthand the role that concern about litigation often plays in the willingness of legislators – especially in small states and cities – to enact needed workplace law reforms. When states and cities consider new policy approaches, being forced to factor in the expense and uncertainty of a likely NLRA preemption lawsuit will have the effect of leading some jurisdictions to conclude they cannot go forward. Even if eventually they would prevail in such a lawsuit, the cost and staffing resources consumed in litigation are very substantial factors, especially for cities. At a time when our nation's workers are struggling to make ends meet and companies are creating novel ways of providing labor and services, the chilling effect of creating a new and indeterminate NLRA preemption test would damage the ability of states and cities to put forward innovative policy arguments.

CONCLUSION

Uber, the Chamber and their *amici* argue that allowing workers to have a say in their work conditions would mark the end of supposedly innovative and flexible work models that give workers freedom to run their own businesses on their own terms. The truth is that nearly every aspect of the operation is dictated by terms set and modified at the will of the companies. There is no incompatibility between offering workers flexibility and negotiating with them over contractual terms and conditions, and history has shown that collective bargaining is possible and desirable for "gig" workers. Seattle made the right choice in offering a collective negotiations structure and process for these workers. It is a model of innovation for the 21st century workforce that should be upheld.

Respectfully submitted this 8th day of December, 2017.

/s/ Rebecca Smith

Rebecca Smith
NATIONAL EMPLOYMENT LAW PROJECT

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B), I hereby certify that this brief contains 4087 words, excluding the portions exempted by Fed. R. App. P. 32(f), where applicable. This brief complies with the length limits set forth at Ninth Circuit Rule 32-4. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word 14-point size Times New Roman font.

Date: December 8, 2017

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 8, 2017, a true and correct copy of the foregoing Amicus brief was filed electronically with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit and served upon all counsel of record via the Court's CM/ECF system.

Dated: December 8, 2017
Seattle, Washington

Respectfully submitted,

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