No. 25-228

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UBER TECHNOLOGIES, INC. AND PORTIER, LLC, et al.,

Plaintiffs-Appellants,

and

MAPLEBEAR INC. D/B/A INSTACART,

Intervenor-Plaintiff – Appellant,

v.

CITY OF SEATTLE,

Defendant-Appellee.

On Appeal from the United States District Court for the
Western District of Washington
No. 2:24-cv-02103-MJP – Hon. Marsha J. Pechman

BRIEF OF *AMICUS CURIAE* INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF APPELLEE THE CITY OF SEATTLE AND AFFIRMANCE OF THE DISTRICT COURT'S ORDER

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DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1(a) and 29(a)(4)(A), undersigned counsel states that *amicus curiae* International Municipal Lawyers Association ("IMLA") is a non-profit, tax-exempt organization incorporated in the District of Columbia. IMLA has no parent corporation and no publicly held company has 10% or greater ownership in IMLA.

DATED this 18th day of March, 2025.

PACIFICA LAW GROUP LLP

By: /s/ Jessica A. Skelton
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I. IDENTITY AND INTEREST OF AMICUS

The International Municipal Lawyers Association ("IMLA") is a non-profit organization of more than 2,500 member entities comprising over 8,000 individual municipal attorneys dedicated to advancing the interests and education of local government lawyers.[1] Established in 1935, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoints of local governments around the country on legal issues before the Supreme Court of the United States, the United States Courts of Appeals, and state supreme and appellate courts.

IMLA is acutely concerned by the detrimental impact to local governments if the Court adopts Appellants' First Amendment arguments. The district court correctly held that Seattle's legitimate, common-sense measure to protect app workers from onerous conditions and arbitrary demands was not compelled speech. Ruling otherwise will have far-reaching negative consequences for municipalities, hindering their well-established authority to regulate unfair—and even unsafe—

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employer conduct. IMLA urges the Court to affirm the district court's denial of a preliminary injunction in this matter.

All parties have consented to IMLA filing this *amicus curiae* brief.

II. INTRODUCTION

The City of Seattle's App-Based Worker Deactivation Rights Ordinance ("Ordinance") is a municipal law exercising the inherent authority of municipalities to protect the health, safety, and welfare of their citizens. Although the Ordinance regulates a newer market—app-based network operators—it is firmly in the mold of municipal workplace regulations that have become a cornerstone of local governance across the United States. For decades, dozens of cities have enacted ordinances that address paid sick leave, fair scheduling, minimum wage requirements, and other worker protections. These regulations respond to distinct local needs while complementing the state and federal framework—addressing gaps in worker protections that particularly impact urban communities.

Appellants Uber Technologies, Inc. and Portier, LLC (together, "Uber") distort the First Amendment in an attempt to disrupt this important municipal function. They seek a ruling that would undermine the authority of municipalities to regulate workplace conditions, create immense disruptions for local governments across the Ninth Circuit and the rest of the United States, and risk invalidating important laws protecting the health, safety and welfare of citizens. The district

court's order correctly rejected Uber's attempt to fundamentally mischaracterize Seattle's workplace regulation as a law compelling speech rather than what it truly is: a legitimate regulation of business conduct that is consistent with many similar local government laws already in place across the United States. When a municipality requires employers to implement and communicate workplace policies, it regulates conduct—namely, economic activity and employment relationships—not expression. Such incidental communication requirements are an inherent aspect of commercial regulation, not First Amendment violations.

This Court should affirm the district court's decision.

III. ARGUMENT

According to Uber, the unique "linchpin" of the Ordinance that subjects it to First Amendment scrutiny is the requirement that network companies "communicate" their written deactivation policies to app workers. Op. Br. at 19. Uber also contends that requiring the company to have a policy at all violates the First Amendment. *Id.* The City of Seattle ably explains why Uber's conception of the First Amendment is fundamentally flawed. *See generally* Resp. Br. IMLA writes to explain how Uber's characterization of the Ordinance as groundbreaking in its requirements is equally incorrect. The Ordinance contains notification requirements similar to those in municipal regulations found across the Ninth Circuit and the rest of the United States. Adopting Uber's approach would have sweeping consequences

for these municipalities and undermine their well-established rights to regulate workplace conduct.

A. Municipalities Have Well-Established Authority to Adopt, and Commonly Impose, Workplace Regulations Like the Ordinance.

Throughout American history, cities have exercised their regulatory authority as part of a well-developed tradition of local governance that predates many state and federal regulatory frameworks. In response to *Lochner*-era attempts to erode the regulatory authority of local governments, Justice Brandeis famously pronounced that a "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. Liebman*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). In reality, however it is often cities that serve as the "laboratories of democracy" that Justice Brandeis envisioned, demonstrating that local governance often serves as the first—and most responsive layer—of our federalist regulatory system.

While the context of the Ordinance—the emerging app-based worker economy—may be novel, the authority Seattle exercised in passing the Ordinance is not. Municipal workplace regulations are grounded in cities' inherent police powers to protect the public health, safety, and welfare of their citizens. "The power to regulate wages and employment conditions lies clearly within a state's or a municipality's police power." *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1150 (9th Cir. 2004) (noting there is "'broad authority under the[] police powers to

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Many cities have implemented workplace regulations consistent with their authority to protect the public health, safety, and welfare. Nearly seventy localities—over half of them in the Ninth Circuit—have adopted their own minimum wage ordinances. *See* Economic Policy Institute, *Minimum Wage Tracker*, available at https://www.epi.org/minimum-wage-tracker/ (collecting jurisdictions). Cities also have enacted other broad worker protections: many mandate paid sick leave, *see, e.g.*, S.F., Cal., Lab. & Employment Code ch. 11 (2023); Oakland, Cal., Code of Ordinances § 5.92.030 (2014); Seattle, Wash., Mun. Code ch. 14.16 (2015); Tacoma, Wash., Mun. Code ch. 18.10 (2019); N.Y.C., N.Y., Admin. Code ch. 8 (2020); while a growing number require fair scheduling with advance notice for shift workers, *see, e.g.*, Berkeley, Cal., Mun. Code ch. 13.101 (2017); L.A., Cal., Mun. Code ch. 18, art. 5 (2023); Chi., Ill., Mun. Code ch. 6-110 (2021). Additionally, some localities

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Appellants are not the first employers to challenge municipal regulations in the workplace. But courts across the country have frequently sided with cities when employers have challenged innovative workplace regulations. *See, e.g.*, *CompassCare v. Hochul*, 125 F.4th 49, 69 (2d Cir. 2025) (affirming district court's dismissal of free speech and free exercise claims related to New York law prohibiting discrimination based on employee's or dependent's "reproductive health decision making"); *Int'l Franchise Ass'n, Inc.*, 803 F.3d at 412 (concluding various constitutional challenges to Seattle's minimum wage law were unlikely to prevail on the merits); *Minnesota Chamber of Commerce v. City of Minneapolis*, 944 N.W.2d 441, 445 (Minn. 2020) (rejecting challenge to Minneapolis's paid sick leave ordinance); *Rest. Law Ctr. v. City of New York*, 90 F.4th 101, 122 (2d Cir. 2024) (rejecting challenge to New York City's ordinance that protects fast food workers from arbitrary terminations). This consistent judicial validation confirms the well-established constitutional foundation of municipal workplace regulations across

numerous contexts and jurisdictions. Appellants' baseless First Amendment challenge offers no reason for this Court to upset these regulatory schemes.

B. Notification Requirements Similar to the Ordinance Already Exist in Municipal Regulations Across the Country.

If this Court accepts Uber's contention that the Ordinance's notification requirements implicate the First Amendment, it will jeopardize large swathes of municipal regulations across the country. The thrust of Uber's argument is that the Ordinance's notification requirements regulate speech by "requir[ing] Uber to speak, and then dictat[ing] what Uber may not say when it does." Op. Br. at 19. But dozens of municipalities have ordinances that require employers to notify their employees of certain policies or rights. For example, the United States Court of Appeals for the Second Circuit recently observed, in affirming dismissal of First Amendment claims against a New York law with similar notification requirements to the Ordinance, that "[t]hese notification requirements are so numerous that the New York State and federal Departments of Labor have compiled lists of them for employers' reference." *CompassCare*, 125 F.4th at 65.

Ordinances with notification requirements, like the Ordinance here, apply whether or not the employers support whatever policy goal a city is pursuing. Contrary to Uber's contention that these notification requirements compel speech and regulate its content, they are common municipal regulations of employer conduct. Below, IMLA discusses a sampling of the municipal ordinances—some of

which have been on the books for decades—that would be jeopardized if this Court adopted Uber's characterization of the First Amendment.

1. Paid Sick Leave Ordinances Frequently Include Notification Requirements.

Numerous cities and counties have laws mandating that private employers provide paid sick leave to workers. *See Interactive Overview of Paid Sick Time Laws in the United States*, A Better Balance, available at https://www.abetterbalance.org/paid-sick-time-laws/. Many of these ordinances include language like that of Tacoma, Washington, which requires that "[e]mployers shall give notice that employees are entitled to paid sick leave." Tacoma, Wash., Mun. Code § 18.10.050(A) (2019). San Francisco, California has a paid sick leave ordinance that requires that "[e]very employer shall post in a conspicuous place at any workplace or job site where any employee works" a notice laying out an employee's rights under the ordinance. S.F., Cal., Lab. & Employment Code § 11.5 (2023). San Diego, California requires that employers give their workers notice of their rights under the ordinance, and that the "notice shall include information on how the Employer satisfies the requirements [of the ordinance]." San Diego, Cal., Mun. Code § 39.0108 (2016).

2. Fair Workweek Hours Ordinances Frequently Include Notification Requirements.

Fair workweek ordinances, also known as predictive scheduling laws, aim to provide shift workers with more predictable and stable work schedules. These ordinances also commonly require employers to communicate to workers their rights under these laws. *See, e.g.*, Emeryville, Cal., Mun. Code § 5-39.08 (2017) ("Each covered employer shall give written notification to each current employee and to each new employee at time of hire of his or her rights under this chapter."); L.A., Cal., Mun. Code § 185.02 (2023) ("Before hiring an Employee, an Employer shall . . . notify a new Employee of their rights under this article."); Phila., Penn., Mun. Code § 9-4608 (2018) ("Each Covered Employer shall post and keep posted . . . a notice . . . setting forth the rights and privileges provided under this Chapter").

These laws also require employers to communicate to workers their proposed work schedules, which also would fall under Uber's expansive definition of "compelled speech." *See* Emeryville, Cal., Mun. Code § 5-39.03 (2017) ("A covered employer shall provide its employees with at least two (2) weeks' notice of their work schedules."); L.A., Cal., Mun. Code § 185.04 (2023) ("An Employer shall provide an Employee with written notice of the Employees' Work Schedule at least 14 calendar days before the start of the work period . . . ."); Phila., Penn., Mun. Code § 9-4602 (2018) ("Upon hiring an employee, a Covered Employer shall provide such employee with a written, good faith estimate of the employee's work schedule.").

3. Living Wage Ordinances Frequently Include Notification Requirements.

One of the most common categories of municipal workplace regulations is laws mandating living wages, also referred to as minimum wage laws. These ordinances also frequently contain mandates that employers communicate with employees. The City of Portland, Maine requires that employers "post in a conspicuous place at any workplace or job where any Employee works, a notice informing Employees of the City's current Minimum Wage rates . . ." and also that they provide a similar notice with employees' first paychecks. Portland, Me., Code of Ordinances § 33.8 (2016). The City of SeaTac in Washington requires employers to provide written notification to covered employees of annual rate adjustments. SeaTac, Wash., Mun. Code § 7.45.050 (2013). Chicago's ordinance requires that employers "post in a conspicuous place at each facility where any Covered Employee works . . . a notice advising the Covered Employee of the current minimum Wages under this chapter, and of a Covered Employee's rights under this chapter, including the Covered Employee's right to seek redress for wage theft." Chi., Ill.; Mun. Code § 6-105-070 (2023). It adds that the employer-posted notice "shall also contain information about human trafficking and resources to help combat it." *Id.*

4. Municipalities Frequently Adopt Other Ordinances with Communication and Notification Requirements.

Municipal ordinances mandating that employers communicate certain information to their employees are not limited to these leave, hours, and wage laws. For example, Oakland, California has similar notification requirements in its ordinance mandating that hospitality service charges be paid entirely to the hospitality worker who served a customer. *See* Oakland, Cal., Code of Ordinances §§ 5.92.040–50 (2018). Los Angeles, California requires that employers provide written notice to hotel workers in its Hotel Worker Protection Ordinance, which provides both wage protections and physical safety protections for hotel workers facing violent or threatening conduct. *See* L.A., Cal., Mun. Code § 182.05 (2022). And Philadelphia, Pennsylvania requires that employers who hire domestic workers (e.g., housekeepers and caretakers) provide those workers with notifications of their rights under Philadelphia law and how to file a complaint if those rights are violated. Phila., Penn., Mun. Code § 9-4504 (2019).

5. Uber Is Already Subject to Ordinances with Communication and Notification Requirements in Seattle.

Uber's request for a preliminary injunction based on irreparable harm is particularly inappropriate, given that it is currently subject to multiple ordinances *in Seattle* that theoretically compel speech and regulate content under Uber's strained interpretation of the First Amendment. Seattle's App-Based Worker Minimum

Payment Ordinance requires that network companies compensate app-based workers a minimum amount determined by a formula. *See* Seattle, Wash., Mun. Code § 8.37.050 (2022). It also requires that covered network companies "shall provide each app-based worker with a written notice of rights" established by the ordinance. *Id*. § 8.37.100. Likewise, Seattle's App-Based Worker Paid Sick and Safe Time ordinance requires that "[n]etwork companies shall affirmatively provide each app-based worker eligible to accrue paid sick and paid safe time with a written notice of rights" established by the ordinance. *Id.* § 8.39.100 (2023). While the ordinance notes that Seattle *may* create a model notice of these rights, the network companies are "responsible for providing app-based workers with the notice of rights required by this [section], in a form and manner sufficient to inform app-based workers of their rights under [the ordinance] regardless of whether [Seattle] has created and distributed a model notice of rights." *Id*.

Uber cannot draw any reasonable distinction between the notification requirements in these other app-based worker ordinances and the Ordinance at issue in this case. All of these ordinances are valid exercises of Seattle's power to regulate employer conduct in the app-based context and they would all be at risk if the Court adopts Uber's interpretation of the First Amendment.

6. Uber's Challenge Jeopardizes Valid Municipal Regulations of Employer Conduct.

The notification and communication requirements in the Ordinance that Uber challenges are entirely consistent with well-established municipal regulatory practices across the country. Cities have long required employers to notify workers of their rights and obligations under local law, and these communication requirements serve crucial informational purposes that enable effective implementation of substantive regulations and ensure that workers can exercise their legally protected rights. Accepting Uber's unprecedented interpretation would not only jeopardize Seattle's Ordinance but would also threaten countless municipal regulations nationwide that include similar notification provisions, undermining local governments' well-established authority to protect workers through comprehensive regulatory frameworks. The First Amendment was never intended to immunize businesses from such basic regulatory compliance measures.

C. Many Municipalities Require Employers to Communicate with Their Workers Through Workplace Policies.

Uber's arguments regarding the Ordinance's requirement that network companies develop a written policy are similarly flawed and unsupported by First Amendment jurisprudence. *See, e.g.,* Op. Br. at 30. Uber's suggestion that the Ordinance is somehow unique in this regard is also divorced from reality. Many cities have enacted ordinances that require employers to have certain policies. San

Francisco's Lactation in the Workplace Ordinance requires that "[e]ach Employer shall develop and implement a policy regarding Lactation Accommodation" and its Drug Free Workplace Ordinance requires that "[e]very employer shall adopt a Drug Free Workplace Policy." S.F., Cal., Lab. & Employment Code § 31.5 (2017); *id.* § 52.4 (1989). New York City similarly requires that employers "shall develop and implement a written policy regarding the provision of a lactation room . . . ." N.Y.C., N.Y., Admin. Code § 8-107.22(c)(i) (2021). Phoenix requires that many employers adhere to "a policy of equal employment opportunity" that includes certain protected classed. *See* Phx., Ariz., City Code § 18-12 (2015). And Chicago's sexual harassment prevention ordinance requires that employers establish written policies that prohibit sexual harassment and communicate to employees how they can report instances of sexual harassment. *See* Chi., Ill., Mun. Code § 6-10-040 (2022).

In fact, once again, Uber is already subject to a Seattle ordinance with a similar requirement. Seattle's App-Based Worker Paid Sick and Safe Time Ordinance requires that "[n]etwork companies shall affirmatively provide each app-based worker with written notice of the network company's policy and procedure for meeting the requirements of [this ordinance]." Seattle, Wash., Mun. Code § 8.39.100.B (2023).

Like the notification requirements, the requirement that an employer have a policy that complies with the law does not regulate speech; it regulates conduct. A

ruling to the contrary would not only fly in the face of established case law, it would disrupt municipal regulatory schemes across the country.

IV. CONCLUSION

Uber seeks to roll back long-recognized municipal authority to regulate employers' conduct, undermining well-established municipal regulations across the country. The Ordinance's requirements to notify app-based workers of deactivation policies and their rights under those policies are consistent with court-sanctioned regulations of workplace conduct commonly found in municipal codes across the country. This Court should affirm the district court's decision denying a preliminary injunction.

DATED this 18th day of March, 2025.

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UNITED STATES COURT OF APPEALS
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Signature *s/ Jessica A. Skelton* **Date** March 18, 2025
*(use "*s/[typed name]*" to sign electronically-filed documents)*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Brief of *Amicus Curiae* International Municipal Lawyers Association with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system on March 18, 2025.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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Appellant Maplebear Inc. d/b/a/ Instacart ("Instacart") distorts the First Amendment in an attempt to disrupt this important municipal function. It seeks a ruling that would undermine the authority of municipalities to regulate workplace conditions, create immense disruptions for local governments across the Ninth Circuit and the rest of the United States, and risk invalidating important laws protecting the health, safety and welfare of citizens. The district court's order

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III. ARGUMENT

According to Instacart, the Ordinance is subject to First Amendment scrutiny because it "conscripts [network] companies as [the City's] messengers." Op. Br. at 1. Instacart also contends that requiring the company to have a policy at all violates the First Amendment. *Id.* The City of Seattle ably explains why Instacart's conception of the First Amendment is fundamentally flawed. *See generally* Resp. Br. IMLA writes to explain how Instacart's characterization of the Ordinance as groundbreaking in its requirements is equally incorrect. The Ordinance contains notification requirements similar to those in municipal regulations found across the Ninth Circuit and the rest of the United States. Adopting Instacart's approach would

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have implemented anti-discrimination laws preventing unfair employment practices against protected classes. *See, e.g.*, Seattle, Wash., Mun. Code ch. 14.04 (2023); Phx., Ariz., City Code ch. 18 (2013). These diverse regulations, and others like them, underscore cities' established authority to safeguard workers' rights and economic security within their jurisdictions.

Appellant is not the first employer to challenge municipal regulations in the workplace. But courts across the country have frequently sided with cities when employers have challenged innovative workplace regulations. *See, e.g.*, *CompassCare v. Hochul*, 125 F.4th 49, 69 (2d Cir. 2025) (affirming district court's dismissal of free speech and free exercise claims related to New York law prohibiting discrimination based on employee's or dependent's "reproductive health decision making"); *Int'l Franchise Ass'n, Inc.*, 803 F.3d at 412 (concluding various constitutional challenges to Seattle's minimum wage law were unlikely to prevail on the merits); *Minnesota Chamber of Commerce v. City of Minneapolis*, 944 N.W.2d 441, 445 (Minn. 2020) (rejecting challenge to Minneapolis's paid sick leave ordinance); *Rest. Law Ctr. v. City of New York*, 90 F.4th 101, 122 (2d Cir. 2024) (rejecting challenge to New York City's ordinance that protects fast food workers from arbitrary terminations). This consistent judicial validation confirms the well-established constitutional foundation of municipal workplace regulations across

numerous contexts and jurisdictions. Appellant's baseless First Amendment challenge offers no reason for this Court to upset these regulatory schemes.

B. Notification Requirements Similar to the Ordinance Already Exist in Municipal Regulations Across the Country.

If this Court accepts Instacart's contention that the Ordinance's notification requirements implicate the First Amendment, it will jeopardize large swathes of municipal regulations across the country. The thrust of Instacart's argument is that the Ordinance's notification requirements regulate speech by "compel[ling] Instacart to speak and distort[ing] Instacart's speech by prescribing the content of Instacart's message . . . ." Op. Br. at 25. But dozens of municipalities have ordinances that require employers to notify their employees of certain policies or rights. For example, the United States Court of Appeals for the Second Circuit recently observed, in affirming dismissal of First Amendment claims against a New York law with similar notification requirements to the Ordinance, that "[t]hese notification requirements are so numerous that the New York State and federal Departments of Labor have compiled lists of them for employers' reference." *CompassCare*, 125 F.4th at 65.

Ordinances with notification requirements, like the Ordinance here, apply whether or not the employers support whatever policy goal a city is pursuing. Contrary to Instacart's contention that these notification requirements compel speech and regulate its content, they are common municipal regulations of employer

conduct. Below, IMLA discusses a sampling of the municipal ordinances—some of which have been on the books for decades—that would be jeopardized if this Court adopted Instacart's characterization of the First Amendment.

1. Paid Sick Leave Ordinances Frequently Include Notification Requirements.

Numerous cities and counties have laws mandating that private employers provide paid sick leave to workers. *See Interactive Overview of Paid Sick Time Laws in the United States*, A Better Balance, available at https://www.abetterbalance.org/paid-sick-time-laws/. Many of these ordinances include language like that of Tacoma, Washington, which requires that "[e]mployers shall give notice that employees are entitled to paid sick leave." Tacoma, Wash., Mun. Code § 18.10.050(A) (2019). San Francisco, California has a paid sick leave ordinance that requires that "[e]very employer shall post in a conspicuous place at any workplace or job site where any employee works" a notice laying out an employee's rights under the ordinance. S.F., Cal., Lab. & Employment Code § 11.5 (2023). San Diego, California requires that employers give their workers notice of their rights under the ordinance, and that the "notice shall include information on how the Employer satisfies the requirements [of the ordinance]." San Diego, Cal., Mun. Code § 39.0108 (2016).

2. Fair Workweek Hours Ordinances Frequently Include Notification Requirements.

Fair workweek ordinances, also known as predictive scheduling laws, aim to provide shift workers with more predictable and stable work schedules. These ordinances also commonly require employers to communicate to workers their rights under these laws. *See, e.g.*, Emeryville, Cal., Mun. Code § 5-39.08 (2017) ("Each covered employer shall give written notification to each current employee and to each new employee at time of hire of his or her rights under this chapter."); L.A., Cal., Mun. Code § 185.02 (2023) ("Before hiring an Employee, an Employer shall . . . notify a new Employee of their rights under this article."); Phila., Penn., Mun. Code § 9-4608 (2018) ("Each Covered Employer shall post and keep posted . . . a notice . . . setting forth the rights and privileges provided under this Chapter").

These laws also require employers to communicate to workers their proposed work schedules, which also would fall under Instacart's expansive definition of "compelled speech." *See* Emeryville, Cal., Mun. Code § 5-39.03 (2017) ("A covered employer shall provide its employees with at least two (2) weeks' notice of their work schedules."); L.A., Cal., Mun. Code § 185.04 (2023) ("An Employer shall provide an Employee with written notice of the Employees' Work Schedule at least 14 calendar days before the start of the work period . . . ."); Phila., Penn., Mun. Code § 9-4602 (2018) ("Upon hiring an employee, a Covered Employer shall provide such employee with a written, good faith estimate of the employee's work schedule.").

3. Living Wage Ordinances Frequently Include Notification Requirements.

One of the most common categories of municipal workplace regulations is laws mandating living wages, also referred to as minimum wage laws. These ordinances also frequently contain mandates that employers communicate with employees. The City of Portland, Maine requires that employers "post in a conspicuous place at any workplace or job where any Employee works, a notice informing Employees of the City's current Minimum Wage rates . . ." and also that they provide a similar notice with employees' first paychecks. Portland, Me., Code of Ordinances § 33.8 (2016). The City of SeaTac in Washington requires employers to provide written notification to covered employees of annual rate adjustments. SeaTac, Wash., Mun. Code § 7.45.050 (2013). Chicago's ordinance requires that employers "post in a conspicuous place at each facility where any Covered Employee works . . . a notice advising the Covered Employee of the current minimum Wages under this chapter, and of a Covered Employee's rights under this chapter, including the Covered Employee's right to seek redress for wage theft." Chi., Ill., Mun. Code § 6-105-070 (2023). It adds that the employer-posted notice "shall also contain information about human trafficking and resources to help combat it." *Id.*

4. Municipalities Frequently Adopt Other Ordinances with Communication and Notification Requirements.

Municipal ordinances mandating that employers communicate certain information to their employees are not limited to these leave, hours, and wage laws. For example, Oakland, California has similar notification requirements in its ordinance mandating that hospitality service charges be paid entirely to the hospitality worker who served a customer. *See* Oakland, Cal., Code of Ordinances §§ 5.92.040–50 (2018). Los Angeles, California requires that employers provide written notice to hotel workers in its Hotel Worker Protection Ordinance, which provides both wage protections and physical safety protections for hotel workers facing violent or threatening conduct. *See* L.A., Cal., Mun. Code § 182.05 (2022). And Philadelphia, Pennsylvania requires that employers who hire domestic workers (e.g., housekeepers and caretakers) provide those workers with notifications of their rights under Philadelphia law and how to file a complaint if those rights are violated. Phila., Penn., Mun. Code § 9-4504 (2019).

5. Instacart Is Already Subject to Ordinances with Communication and Notification Requirements in Seattle.

Instacart's request for a preliminary injunction based on irreparable harm is particularly inappropriate, given that it is currently subject to multiple ordinances *in Seattle* that theoretically compel speech and regulate content under Instacart's strained interpretation of the First Amendment. Seattle's App-Based Worker

Minimum Payment Ordinance requires that network companies compensate app-based workers a minimum amount determined by a formula. *See* Seattle, Wash., Mun. Code § 8.37.050 (2022). It also requires that covered network companies "shall provide each app-based worker with a written notice of rights" established by the ordinance. *Id*. § 8.37.100. Likewise, Seattle's App-Based Worker Paid Sick and Safe Time ordinance requires that "[n]etwork companies shall affirmatively provide each app-based worker eligible to accrue paid sick and paid safe time with a written notice of rights" established by the ordinance. *Id.* § 8.39.100 (2023). While the ordinance notes that Seattle *may* create a model notice of these rights, the network companies are "responsible for providing app-based workers with the notice of rights required by this [section], in a form and manner sufficient to inform app-based workers of their rights under [the ordinance] regardless of whether [Seattle] has created and distributed a model notice of rights." *Id*.

Instacart cannot draw any reasonable distinction between the notification requirements in these other app-based worker ordinances and the Ordinance at issue in this case. All of these ordinances are valid exercises of Seattle's power to regulate employer conduct in the app-based context and they would all be at risk if the Court adopts Instacart's interpretation of the First Amendment.

6. Instacart's Challenge Jeopardizes Valid Municipal Regulations of Employer Conduct.

The notification and communication requirements in the Ordinance that Instacart challenges are entirely consistent with well-established municipal regulatory practices across the country. Cities have long required employers to notify workers of their rights and obligations under local law, and these communication requirements serve crucial informational purposes that enable effective implementation of substantive regulations and ensure that workers can exercise their legally protected rights. Accepting Instacart's unprecedented interpretation would not only jeopardize Seattle's Ordinance but would also threaten countless municipal regulations nationwide that include similar notification provisions, undermining local governments' well-established authority to protect workers through comprehensive regulatory frameworks. The First Amendment was never intended to immunize businesses from such basic regulatory compliance measures.

C. Many Municipalities Require Employers to Communicate with Their Workers Through Workplace Policies.

Instacart's arguments regarding the Ordinance's requirement that network companies develop a written policy are similarly flawed and unsupported by First Amendment jurisprudence. *See, e.g.,* Op. Br. at 26. Instacart's suggestion that the Ordinance is somehow novel in this regard is also divorced from reality. Many cities have enacted ordinances that require employers to have certain policies. San

Francisco's Lactation in the Workplace Ordinance requires that "[e]ach Employer shall develop and implement a policy regarding Lactation Accommodation" and its Drug Free Workplace Ordinance requires that "[e]very employer shall adopt a Drug Free Workplace Policy." S.F., Cal., Lab. & Employment Code § 31.5 (2017); *id.* § 52.4 (1989). New York City similarly requires that employers "shall develop and implement a written policy regarding the provision of a lactation room . . . ." N.Y.C., N.Y., Admin. Code § 8-107.22(c)(i) (2021). Phoenix requires that many employers adhere to "a policy of equal employment opportunity" that includes certain protected classed. *See* Phx., Ariz., City Code § 18-12 (2015). And Chicago's sexual harassment prevention ordinance requires that employers establish written policies that prohibit sexual harassment and communicate to employees how they can report instances of sexual harassment. *See* Chi., Ill., Mun. Code § 6-10-040 (2022).

In fact, once again, Instacart is already subject to a Seattle ordinance with a similar requirement. Seattle's App-Based Worker Paid Sick and Safe Time Ordinance requires that "[n]etwork companies shall affirmatively provide each app-based worker with written notice of the network company's policy and procedure for meeting the requirements of [this ordinance]." Seattle, Wash., Mun. Code § 8.39.100.B (2023).

Like the notification requirements, the requirement that an employer have a policy that complies with the law does not regulate speech; it regulates conduct. A

ruling to the contrary would not only fly in the face of established case law, it would disrupt municipal regulatory schemes across the country.

IV. CONCLUSION

Instacart seeks to roll back long-recognized municipal authority to regulate employers' conduct, undermining well-established municipal regulations across the country. The Ordinance's requirements to notify app-based workers of deactivation policies and their rights under those policies are consistent with court-sanctioned regulations of workplace conduct commonly found in municipal codes across the country. This Court should affirm the district court's decision denying a preliminary injunction.

DATED this 18th day of March, 2025.

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I hereby certify that I electronically filed the foregoing Brief of *Amicus Curiae* International Municipal Lawyers Association with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system on March 18, 2025.

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