Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF SEATTLE *et al.*

Defendants.

Case No. 17-cv-00370-RSL

PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION

NOTED ON CALENDAR FOR ORAL ARGUMENT: March 30, 2017 at 3:00 p.m.

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An injunction is necessary by April 3 to prevent compelled disclosure of confidential, non-public information revealing the identities of high-volume and recently active drivers. The City has already delayed implementation of the Ordinance for over a year, so there is no basis for it now to insist that April 3 bears some special importance. At a minimum, the Ordinance should be enjoined for long enough to rule on this motion.

I. THE CHAMBER IS LIKELY TO SUCCEED ON THE MERITS

A. The Chamber's Antitrust Preemption Claim Is Ripe

The Chamber's antitrust preemption claim is now ripe because its members are subject to "certainly impending" injury from the City's collective-bargaining scheme. *S.B.A. List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014). On April 3, they will suffer two distinct concrete injuries: they will be forced to (1) give the Teamsters proprietary driver lists for the sole, avowed purpose of unionizing the drivers for collective bargaining; *i.e.*, convincing drivers to combine in an antitrust conspiracy, and (2) engage in a costly and disruptive union organizing campaign.

Although the City does not dispute that these injuries are "certainly impending,"[1] it nevertheless argues that the antitrust claim is not ripe until an additional, future injury occurs: the drivers actually fix prices under collective bargaining. Opp. 11. But that confuses a potential antitrust violation claim against the Teamsters with an antitrust preemption claim against the City, and is based on a fundamental misunderstanding both of how *preemption* claims are substantively adjudicated and when Article III authorizes adjudication. Even assuming arguendo that only the collective bargaining itself violates the Sherman Act that is beside the point. The Chamber is not suing the *Teamsters* for *violating* the Sherman Act; it is suing the *City* under the *Supremacy Clause* for imposing a regulatory regime that, on its face, conflicts with the Act.

[1] On the second injury, the City does contend that "whether [the Teamsters] will even pursue statements of interest from … qualifying drivers after receiving the required lists … is entirely speculative." Opp. at 11. It surely is not. Organizing the drivers is the entire purpose of requesting the driver lists. And injury sufficient for standing exists where a mandatory disclosure triggers an opponent's statutory right to burden the plaintiff and "there [i]s no indication that [the] opponent would forego that opportunity." *Davis v. FEC*, 554 U.S. 724, 734–35 (2008).

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That claim is ripe when the conflicting law is imposed on and injures the plaintiff, and the substantive preemption question is whether the local law's regulatory regime is inconsistent with the federal statutory scheme—not whether the defendants have violated the federal statute. *See Fisher v. City of Berkeley*, 475 U.S. 260, 264 (1986) (distinguishing between an illegal antitrust conspiracy and a facial preemption claim). A local law is preempted when it "*authorizes* conduct that necessarily constitutes a violation of the antitrust laws," not when private actors consummate the violation. *Id.* (emphasis added).

Here, the Ordinance authorizes coordinated price fixing by multiple independent actors. There is no need to wait until the price-fixing conspiracy is consummated. A conflict with the Sherman Act exists now because the entire Ordinance purports to implement a regulatory scheme that Congress has forbidden. And the Ordinance compels the Chamber's members to take action—now—to further this preempted collective-bargaining scheme.

Further, *every* aspect of the Ordinance violates the Supremacy Clause because *every* provision works together as an integrated whole to form the City's collective-bargaining scheme. Where "the object of a statute under review [i]s to accomplish [a] single general purpose [that] … fail[s] for want of constitutional power to effect it, the remaining provisions of the act, serving merely to facilitate or contribute to the consummation of that purpose, must likewise fail." *Williams v. Standard Oil Co. of La.*, 278 U.S. 235, 245 (1929), *overruled in part on other grounds by Olsen v. Neb.*, 313 U.S. 236, 244 (1941). Thus, in *Williams*, after finding unlawful a state statute fixing the price of gasoline, the Supreme Court invalidated record-collection and other requirements (notwithstanding the statute's severability provision) as "mere adjuncts of the price-fixing provisions of the law or mere aids to their effective execution." *Id.* at 243; *see also Davis v. FEC*, 554 U.S. 724, 744 (2008) (because "disclosure requirements were designed to implement" an unconstitutional scheme, "it follows that they too are unconstitutional"). Here, likewise, there is no purpose for the disclosure provision, no purpose for a QDR or an EDR, and no purpose for a union election other than for collective bargaining—all are "mere adjuncts of

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the [illegal] price-fixing provisions" "or mere aids to their effective execution." *Williams*, 278 U.S. at 243. The entire scheme is therefore preempted.

In any event, the City is wrong that a per se antitrust violation will not occur until *after* an EDR is certified and seeks to bargain. An antitrust conspiracy is "ripe when the agreement to restrain competition is formed," *United States v. Inryco, Inc.*, 642 F.2d 290 (9th Cir. 1981), so the impending *per se* antitrust violations will be complete in early April, when the Teamsters start obtaining agreements from drivers to join the union. *Cf. Meat Drivers v. United States*, 371 U.S. 94, 98–99 (1962) (upholding injunction ordering dissolution of union of independent contractors). That conspiracy is "certainly impending," and the Chamber's claim is thus ripe.

B. The Chamber Has Associational Standing

The City argues that no associational standing is ever permitted for antitrust violation claims under the Clayton Act. Opp. 12. While this argument might be relevant for a damages claim alleging a violation of that statute, the Chamber asserts a violation of the Supremacy Clause and seeks equitable relief. And since that preemption claim does not seek damages, there is no need for an individualized damage analysis.[2]

C. The State-Action Doctrine Does Not Immunize The Price-Fixing Scheme

Clear Articulation. The clear-articulation requirement is met only if the state has "affirmatively contemplated" a "discrete form[]" of anti-competitive conduct within a scope of delegated authority, and the local government is acting within the scope of that delegated authority. *FTC v. Phoebe Putney Health Systems, Inc.*, 133 S. Ct. 1003, 1011, 1016 (2013); *see also Springs Ambulance v. City of Rancho Mirage*, 745 F.2d 1270, 1273 (9th Cir. 1984) (state must have "contemplated the kind of actions alleged to be anticompetitive"). Here, the state

[2] In any event, courts routinely hold that associations have standing under the Clayton Act so long as they satisfy the basic requirements for associational standing, which the City does not challenge here. *See, e.g., S.W. Suburban Bd. of Realtors, Inc. v. Beverly Area Planning Ass'n*, 830 F.2d 1374, 1380 (7th Cir. 1987) (citing cases); *Nat'l Constructors Ass'n v. Nat'l Elec.Contractors Ass'n, Inc.*, 498 F. Supp. 510, 515 (D. Md. 1980), *aff'd as modified*, 678 F.2d 492 (4th Cir. 1982).

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delegated limited, enumerated authority to Seattle to regulate for-hire transportation. RCW 46.72.160. That authority allows the City to regulate for-hire drivers and their relationship to the public, but in no way authorizes regulation of the contractual relationship between for-hire drivers and third parties who do business with them, such as ride-referral companies. And the state has granted antitrust immunity only within the scope of that delegated authority, RCW 46.72.001. Seattle's collective-bargaining Ordinance, however, falls outside the activities that are affirmatively contemplated by those statutes. While the delegated power to "[c]ontrol[] … rates" might authorize the imposition of an anticompetitive rate schedule for the rates charged to the public, and the delegated power to require driver permits might authorize anticompetitive exclusion of drivers, RCW 46.72.160(2)–(3), there is no language that can remotely be construed as contemplating anticompetitive unionization and collective bargaining between for-hire drivers and Uber, Lyft, and Eastside. *See* Mot. 9–12.

Even if the delegated authority encompassed the relationship between drivers and third-party coordinators, this is insufficient because the state must also have "affirmatively contemplated" the type of anticompetitive restraint the City has undertaken—the "kinds of actions alleged to be anticompetitive." *Springs Ambulance*, 745 F.2d at 1273. Thus, in *Phoebe Putney*, even if the legislature had affirmatively contemplated that hospitals could collectively bargain with independent doctors, the clear-articulation requirement would not have been met because the legislature did not affirmatively contemplate anticompetitive mergers—a different type of anticompetitive restraint. Here, the state's general grant of immunity under RCW 46.72.001 says nothing about collective-bargaining by independent contractors to fix prices for ride-referral technology. Given the particular novelty of this scheme, it is not credible to suggest that the state "affirmatively contemplated" this kind of anticompetitive action.

Recognizing that the state never affirmatively contemplated the collective-bargaining scheme, and that the scheme's anticompetitive regulation of ride-referral companies is outside the scope of the delegated authority, the City seeks to preclude the Court from even examining

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these central inquiries, claiming that the Court must take at face value the City's assertion that the delegation authorizes the Ordinance. Opp. 15. But this reading of *City of Columbia*, 499 U.S. 365, 371 (1991), would gut the clear-articulation requirement and completely shield municipalities from any inquiry at all. To be sure, a municipality does not lose contemplated antitrust immunity merely because a local law is "defective" or wrongly implemented under state law. *Id.* But that hardly means the Court is estopped from examining whether the state law reasonably encompasses or contemplates the challenged local regulation—that question is the very core of the "clear articulation" inquiry. If the City claimed the state laws here authorized anticompetitive regulation of for-hire drivers and their *landlords* (on the theory that lower rents, like higher compensation, will improve the drivers' reliability), the Court could obviously examine the validity of that effort to distort state law. [3] So too here, the Court can and must examine whether state law affirmatively contemplates local regulation of contracts between drivers and third-party coordinators.

Active Supervision. The City claims that no state official must supervise the private anticompetitive conduct authorized under the Ordinance, because a municipal official can do so. Opp. 16. But the Supreme Court has emphatically stated that "active state supervision must be shown," *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 46 n.10 (1985), and has never uttered the phrase "active municipal supervision." Unlike sovereign states, municipalities "are not beyond the reach of the antitrust laws by virtue of their status because they are not themselves sovereign." *Id.* at 38. That is why municipalities must have *state* authorization and must be subject to "active *state* supervision," *id.* at 46 n.10 (emphasis added). This issue was not squarely presented in *Tom Hudson*, 746 F.2d 1370, 1374 (9th Cir. 1984), because the issue there was whether the city's level of supervision was sufficient, not whether it could supervise the

[3] Indeed, under the City's theory, it could force collective bargaining upon all manner of companies doing business with for-hire drivers, such as automobile dealers, mechanics, fuel companies, and providers of GPS services.

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conduct at all. *Id.* The court never addressed whether municipal supervision was the same as state supervision; it simply assumed an incorrect answer to that question.

Anyway, there is not even active *municipal* supervision here because "the absence of [the Director's] participation in the mechanics" of collective-bargaining is "so apparent." *FTC v. Ticor Title*, 504 U.S. 621, 633 (1992). The Director's *approval* of a *final* agreement obviously does not authorize participation "in the mechanics" of the bargaining process. In fact, if the parties cannot agree on terms during the bargaining process, the dispute goes to a private arbitrator—not to the Director—and the arbitrator imposes whatever terms he thinks are "the most fair and reasonable." Ordinance § 3(I)(2). The Director does no more than blanket the collective-bargaining agreement with a "gauzy cloak of state involvement," which is not enough. *Cal. Retail Liquor Dealers v. Midcal Aluminum, Inc*, 445 U.S. 97, 106 (1980).

Finally, the City claims that collective bargaining by thousands of independent contractors is not concerted action for antitrust purposes because the Ordinance's anticompetitive effects arise from the City's unilateral action. Opp. 18. Anticompetitive restraints "unilaterally" imposed by government are permissible under the Sherman Act, while "hybrid restraints" where the anticompetitive effects stem from private concerted action are impermissible. *Fisher*, 475 U.S. at 268; *see also Yakima Valley Mem. Hosp. v. Wash. Dept. of Health*, 654 F.3d 919, 927 (9th Cir. 2011) ("A regulation is a unilateral restraint when no further action is necessary by the private parties because the anticompetitive nature of the restraint is complete upon enactment") (alteration omitted). Thus, no concerted action existed under Berkeley's rent-control scheme because "the rent ceilings [were] imposed by the Ordinance" itself. *Fisher*, 475 U.S. at 266. Unlike in *Fisher*, Seattle's Ordinance gives for-hire drivers the power to determine prices through their concerted action. The Director does not even have authority to propose any price term—that comes exclusively from the private union or the private arbitrator. Thus, the Teamsters' effort to have drivers band together to fix prices is no different than the landlords in *Fisher* "voluntarily band[ing] together to stabilize rents"—the very action *Fisher* distinguishes as

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proscribed concerted action. *Id*.

D. The Court Should Enjoin The Entire Ordinance

Finally, the City contends that the Court should enjoin collective bargaining only over the prices for-hire drivers will pay for ride-referral services from driver coordinators, because the other subjects of collective bargaining are not *per se* illegal. Opp. 19. But the entire collective-bargaining scheme is preempted because its exists primarily to fix prices. As the FTC has stated, collective bargaining is "designed to raise the incomes and improve the working conditions of union members," not to "ensure the safety or quality of products or services." Mot. 11.

In any event, the question whether some aspects of the Ordinance survive is premature because severability is a remedial issue to be reached only after liability is established. Thus, the Court should preliminarily enjoin enforcement of the entire Ordinance pending final adjudication of severability issues. At the appropriate time, the Chamber will show that the collective bargaining over prices is inseverable from the rest of the Ordinance because the invalid core provisions are so "intimately connected with the balance of the act as to make it useless to accomplish the purposes of the legislature." *Wash. State Republican Party v. Wash. State Grange*, 676 F.3d 784, 798 (9th Cir. 2012); *see also supra* pp. 2–3 (discussing *Williams*, 278 U.S. at 245). The sole and obvious purpose of the Ordinance, according to bill sponsor Mike O'Brien, was "to balance the playing field" between Uber and "drivers making less than minimum wage." Daniel Beekman, *City Council Member Says Let Uber Drivers Unionize*, Seattle Times (Aug. 31, 2015), goo.gl/BybwbH. It was not, contrary to the City's ahistorical suggestion, to assist drivers in negotiating vehicle safety standards (which they are free today to set for themselves).[4]

[4] In any event, price-fixing is not the only aspect of the Ordinance that constitutes a *per se* violation of the antitrust laws. The drivers' bargaining agreement will boycott non-union drivers by precluding the Chamber's members from doing business with drivers who do not wish to be subject to the collective-bargaining agreement. Ordinance § 2 (bargaining agreement is "applicable to all of the for-hire drivers employed by that driver coordinator"). This boycott of horizontal competitors constitutes a *per se* antitrust violation, *Nynex Corp. v. Discon, Inc.*, 525 U.S. 128, 134 (1998), and the Ordinance will not work without it.

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E. The NLRA Preempts The Ordinance

***Machinists* preemption.** The City does not dispute that the NLRA completely exempts independent contractors from coverage, or the legislative history establishing Congress's view that they are fundamentally different from employees. Instead, relying exclusively on the second clause of Section 14(a) of the NLRA, and omitting the first, the City argues that independent contractors are not excluded from the Act's coverage because Congress did not want them to be permitted to collectively bargain, but because Congress was indifferent to that question and decided to permit the states to regulate it. The City's interpretation is wrong.

In *Beasley v. Food Fair of N.C., Inc*., 416 U.S. 653, 662 (1974), the Supreme Court held that the exclusion of "supervisors" from the NLRA's coverage meant that states could not regulate them either, because Congress intended to exclude them from collective bargaining entirely. To reach this conclusion, the Court relied on three things: Section 2(3)'s statutory exclusion; the legislative history, in which Congress excluded supervisors from the Act's coverage in response to NLRB and Court decisions including them against Congress's wishes; and Section 14(a) of the NLRA. *Id.* at 658–62. The first two of these are identical with respect to independent contractors. The statutory text excludes them from coverage, and Congress did so immediately after NLRB and court decisions purported to permit independent contractors to unionize. Mot. 15. And the avowed reason for the exclusion was that collective bargaining was *inappropriate* for independent economic actors like independent contractors. H.R. Rep. No. 80-245, at 18 (1947).[5] The sole distinction between this case and *Beasley*—that Section 14(a) speaks further to the status of supervisors—is entirely immaterial to the analysis. It does not, as the City suggests, require a different result as to independent contractors.

[5] The City's claim (at 6-7, n.3) that "the Supreme Court has recognized that the interests of employees and independent contractors may often be closely intertwined" is misleading. *Carroll* held that individuals who sometimes acted as independent contractors other times worked as employees could be considered part of a "labor group." *Am. Federation of Musicians v. Carroll*, 391 U.S. 99, 105–07 (1968). That analysis has no bearing at all here.

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Read in its entirety,[6] Section 14(a) reflects the historical reality that some supervisors had joined unions, sometimes with the consent of their employers, and Congress did not intend to upend *consensual* arrangements by excluding supervisors from the Act's coverage. *See Beasley* 416 U.S. at 662. Thus, the first clause of 14(a) *permits* supervisors to enjoy the Act's coverage if the employer agrees. This necessitates the proviso in the second clause prohibiting any government efforts to *require* these arrangements. Since the NLRA does not create an exception permitting "independent contractors" to join unions with the employer's consent, there was no need to clarify, as there was with supervisors, that this permissive membership did not authorize requiring collective bargaining. Thus, section 14(a)'s explicit prohibition of "supervisor" regulation does not create implicit authorization of "independent contractor" regulation. And any such inference is contrary to *Machinists*' (and *Beasley*'s) basic rule that explicit exclusion from NLRA regulation implicitly precludes state regulation.

***Garmon* preemption.** The City claims that *Garmon* preemption is not established "simply because a state or local official may be required to determine whether a worker is an NLRA 'employee'" or "there may *hypothetically* be a future dispute over whether some specific group of workers is covered by the NLRA." Opp. 8 (emphasis added). But the Chamber has not suggested that it does. Instead, we argue that the fact that the NLRB is *currently* considering *actual* (not hypothetical) claims *by the very type of drivers at issue* that they are "employees" within the meaning of the NLRA prevents the City, and the state courts, from adjudicating whether *those drivers* fall within the NLRA's definition of "employee." Br. at 21. As the Court held in *Garmon*, "[i]t is essential to the administration" of the NLRA that determinations regarding the Act's scope and coverage "be left in the first instance to the [NLRB]." 359 U.S. 236, 244–45 (1959). And "[t]he need for protecting the exclusivity of NLRB jurisdiction is

[6] Section 14(a) states: "Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining." 29 U.S.C. § 164(a).

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obviously greatest when the precise issue brought before a court is in the process of litigation through procedures originating at the Board. While the Board's "decision is not the last word, it must assuredly be the first." *Marine Eng'rs v. Interlake S.S. Co.*, 370 U.S. 173, 185 (1962). And while *Int'l Longshoremen's Ass'n v. Davis*, 476 U.S. 380, 382 (1986), requires some factual showing that the individuals in question were "arguably" employees, the NLRB's long consideration of that precise question provides that showing here. *See* Steger Decl. ¶ 14; Kelsay Decl. ¶ 8 (NLRB cases pending over a year).

Defendants are incorrect that the *Garmon* preemption claim requires proof that individual members contract with drivers who are arguably NLRA "employees." The Chamber does not claim that the Ordinance cannot be enforced against any *particular* member. Rather, the claim is that the Ordinance is preempted because it tasks local officials with applying the NLRA, while the crucial question is pending before the NLRB. This claim presents a "pure question of law" that does not require consideration of any Chamber members' specific factual circumstances.

II. ABSENT AN INJUNCTION, IRREPARABLE INJURY IS LIKELY

The City insists that the information in the driver lists is already publicly available. Opp. 20. That is obviously false. If it were true, the Teamsters would not need the Chamber's members to disclose it, the disclosure provision would be superfluous, and there would be no public interest to support the denial of a preliminary injunction. Among other things, the publicly available information does not show how *frequently* a driver uses a specific ride-referral service or how *recently* the driver used that service. 2d. Kelsay Decl. ¶ 5–6. **N**o matter how much effort a competitor spends mining the public archives, it could at most compile a list of anyone who has ever been licensed to drive—although even that appears impossible as the City itself conceded in state proceedings. *Id.* It is useless to competitors to have thousands of names of drivers who might have once used a ride-referral app six years ago. In contrast, the Ordinance forces the Chamber's members to disclose a list of their most high volume and most recent drivers—those who have driven "at least 52 trips" in Seattle "during any three-month period

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during the 12 months preceding the commencement date." Eng. Decl. Ex. C. That compiled information is closely guarded and highly valuable to competitors. 2d. Kelsay Decl. ¶ 3–4. [7]

The City asks Uber, and Lyft, and Eastside just to trust the Teamsters with the information, because any misuse "could subject Local 117 to a misappropriation claim." Opp. 21. But the disclosure is an irreparable harm precisely because, once disclosed, its "confidentiality will be lost for all time," and the status quo can "never be restored." *Providence Journal Co. v. FBI*, 595 F.2d 889, 890 (1st Cir. 1979). Disclosure is particularly harmful here because the Teamsters seek information from every competitor in Seattle. This commingling of competitor information in the possession of an entity attempting to organize those competitors seriously increases the risk that the information will be misused, whether intentionally, negligently, or by hackers. And the Chamber's members have explained in detail how they could be harmed if this information is revealed to a competitor. Kelsay Decl. ¶ 15.

The disclosures also kick off the union-election campaigns. This is additional irreparable injury because it will compel the Chamber's members to spend money educating drivers and hiring labor-relations experts, and it will "disrupt and change" their business "in ways that most likely cannot be compensated with damages." *Am. Trucking v. City of Los Angeles*, 559 F.3d 1046, 1058 (9th Cir. 2009); *see also* Kelsay Decl. ¶ 20.[8]

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[7] Not only is the information confidential, which is enough for irreparable harm, but the Chamber's members guard it as a trade secret, and disclosure of a trade secret "will almost always certainly show irreparable harm," *Pac. Aero. & Elecs., Inc. v. Taylor*, 295 F. Supp. 2d 1188, 1198 (E.D. Wash. 2003). Kelsay Decl. ¶ 13–17; Steger Decl. ¶ 17; Takar Decl. ¶ 12. The City incorrectly claims that Uber and Lyft have "already lost that argument in state court." Opp. 20. But Uber and Lyft prevailed in state court, obtaining an injunction preventing the City from disclosing their compiled data showing "the percentage or number of rides picked up in each ZIP code," and "the pick-up and drop-off ZIP codes of each ride," because Uber and Lyft's "Zip Code Data are trade secrets." 2d. Kelsay Decl. Ex. B. at 2, 17. The City's cited case concerned a list of VIN numbers that "the City" itself "compil[ed]," not Uber or Lyft. Ryan Decl. Ex. E at 6. Those VIN numbers did not reveal driver identities, and did not reveal information about the frequency of drivers' use of the Uber and Lyft Apps. Ryan Decl. Ex. E at 6. That specific usage information qualifies as a trade secret. 2d. Kelsay Decl. Ex. B at 17–18.

[8] These expenditures are not irrelevant self-inflicted harms, Opp. 23, because the election campaign is "certainly impending," and a party can "reasonably incur costs to mitigate or avoid" certainly impending injury. *Clapper v. Amnesty Int'l*, 133 S. Ct. 1138, 1150 n.5 (2013).

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Finally, the Ninth Circuit has already held that the government causes irreparable injury when it subjects a business to regulations "which are likely unconstitutional because they are preempted." *Am. Trucking*, 559 F.3d at 1058. The City claims that the Supreme Court secretly overruled *American Trucking* in *Armstrong v. Exceptional Child Ctr.*, 135 S. Ct. 1378, 1383 (2015), when it stated that the Supremacy Clause "is not the source of any federal rights." Opp. 22. But the Supreme Court has said that the Supremacy Clause is "not a source of any federal rights" for nearly forty years, *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 613 (1979). And *Armstrong*'s holding, that the Supremacy Clause does not create its own cause of action, does not affect the rule that a party suffers irreparable harm when it is subjected to a preempted, unconstitutional local regulation. Nor does it matter that *American Trucking* also discussed costs and business disruption as alternative harms; those same harms exist here.

III. THE REMAINING FACTORS SHARPLY FAVOR THE CHAMBER

The City has already delayed the Ordinance by over fifteen months and resisted the Chamber's attempt to adjudicate these claims in advance so that a preliminary injunction would not be necessary to preserve the status quo. It cannot now contend there is something magical about April 3 that should prevent this Court from putting the Ordinance on hold long enough to contemplate the merits. An injunction would merely maintain the status quo, rather than subjecting the Chamber's members to irrevocable disclosure of confidential information and to an unprecedented union-election campaign targeting independent contractors. If the Court enjoins the Ordinance, both sides can avoid spending resources implementing it. Further, the public always has an interest in preventing the state from violating federal law. *Valle del Sol, Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013).

CONCLUSION

The Court should grant the Chamber's motion for a preliminary injunction.

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Dated this 24th day of March, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties who have appeared in this case

DATED: March 24, 2017 at Seattle, Washington.

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