

No. 26-956

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

WHEELY USA, INC.,
MAYFAIR-NY LLC, AND KENSINGTON-NY LLC,

Plaintiffs-Appellants,

v.

THE CITY OF NEW YORK,

Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of New York (New York City)

D. Ct. No. 1:26-cv-1057

The Honorable Colleen McMahon, Senior District Judge

**BRIEF OF THE CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA AS *AMICUS CURIAE*
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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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* The Chamber of Commerce of the United States of America (the Chamber) is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

Date: July 2, 2026

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IDENTITY AND INTEREST OF *AMICUS CURIAE*¹

Amicus curiae The Chamber of Commerce of the United States of America (Chamber) is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber routinely files *amicus* briefs in this Court. *See, e.g.*, Brief of the Chamber of Commerce of the United States of America et al. as *Amici Curiae* in Support of Plaintiff-Appellant and Reversal, *Maplebear, Inc. v. City of New York*, No. 26-172 (2d Cir.), ECF No. 66.1 (May 18, 2026); Brief of the Chamber of Commerce of the United States of America et al. as *Amici Curiae* Supporting Respondents and

¹ All parties have consented to the filing of this brief. No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

Affirmance, Raritan Baykeeper, Inc. v. N.Y. State Dep't of Env'tl. Conservation (2d Cir.), ECF No. 45.1 (Mar. 30, 2026); Brief for *Amicus Curiae* Chamber of Commerce of the United States of America in Support of Defendants-Appellants CVS Health Corp. & Omnicare, Inc., *United States ex rel. Bassan v. Omnicare, Inc.*, Nos. 25-2257 etc. (2d Cir.), ECF No. 85.1 (Jan. 27, 2026).

The Chamber has a strong interest in this case, in which the district court endorsed a troubling infringement of the right of businesses to be free from unreasonable searches. The Supreme Court has long recognized that businesses, like individuals, are protected by the Fourth Amendment, and just as with individuals' effects, there is a presumption that the government cannot demand the turnover of businesses' records without a valid warrant. The decision below takes an expansive view of the narrow exceptions to this principle and thus casts doubt on important constitutional protections that businesses enjoy. The erosion of these rights threatens not only the privacy of businesses and those who operate them, but also those of customers. In this case, for example, the detailed datasets that the New York City Taxi and Limousine Commission (TLC) requires to be turned over by for-hire-vehicle (FHV) businesses can and

have been leveraged to reconstruct intimate details of individuals' lives. This case thus demonstrates how protecting the rights of businesses aligns with consumer protection.

Additionally, the district court's cramped interpretation of the Fourth Amendment limits market entrants' ability to compete for business on the dimension of privacy. Businesses should have the freedom to make choices on how to manage their customers' data. Here, plaintiffs-appellants (collectively, Wheely) wish to take a privacy-focused approach, but the TLC regulations at issue preclude them from competing in that area, again to the detriment of consumers.

The Chamber urges this Court to reverse the judgment below.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case addresses whether New York City may conduct a warrantless "administrative search" of Wheely's private records. In general, for an administrative search to comport with the Fourth Amendment, "the subject of the search must be afforded an opportunity to obtain pre-compliance review before a neutral decisionmaker." *City of Los Angeles v. Patel*, 576 U.S. 409, 420 (2015). Typically, that means the regulator

must serve a subpoena and give the business the opportunity to challenge the subpoena's scope.

The Supreme Court has applied a “more relaxed standard” to the “narrow” category of businesses that are deemed “pervasively regulated,” on the theory that market entrants understand that they have limited expectations of privacy in their records. *Patel*, 576 U.S. at 424. When it comes to warrantless administrative searches of these businesses, the Court has held that the Fourth Amendment is satisfied if “(1) ‘[t]here [is] a “substantial” government interest that informs the regulatory scheme pursuant to which the inspection is made’; (2) ‘the warrantless inspections [are] “necessary” to further [the] regulatory scheme’; and (3) ‘the statute’s inspection program, in terms of the certainty and regularity of its application, . . . provid[es] a constitutionally adequate substitute for a warrant.’” *Id.* at 426 (fourth alteration in original) (quoting *New York v. Burger*, 482 U.S. 691, 702-03 (1987)).

This case involves a requirement that FHV businesses in New York City turn over detailed drop-off information for each and every one of their rides, in perpetuity, without any particularized suspicion regarding a specific driver or ride. The district court rejected Wheely’s Fourth

Amendment claim, finding that the FHV industry is pervasively regulated and that the regulations at issue are properly tailored. The court additionally held that precompliance review is available in any event because New York law allows regulated entities to challenge agency action in state court before incurring penalties.

The district court's conclusion was erroneous. The TLC regulations at issue violate the Fourth Amendment.

First, the district court's analysis as to precompliance review misunderstands the role such review plays. Proper precompliance review allows a business to challenge the scope of a particular search. Here, however, the scope of the search is set by the regulation: it is ongoing, lasts in perpetuity, and requires data on *all* rides. That renders precompliance review meaningless, as there is nothing to review. And if the mere fact that a state-court suit could be asserted solves the Fourth Amendment problem, that would cause an untenable circularity issue—the mere existence of the state-court suit would cause that very suit to fail.

Second, the district court took an overly expansive view of what it means for an industry to be “pervasively regulated.” In the court's view,

that FHV businesses are subject to a large number of regulations in many facets of their operations, and that the regulations at issue have been on the books for a decade, proves a longstanding tradition of pervasive regulation. But the Supreme Court's doctrine has demanded a more thorough history than that, and sheer quantity of regulations has never sufficed. Indeed, if that were enough, it is hard to imagine what industry would not count as pervasively regulated today, despite the Supreme Court's oft-repeated caution that the exception is a narrow one. It also cannot be correct, as the district court concluded, that incumbent businesses' failure to challenge the regulations gives them constitutional grounding.

Third, even if it were true that the FHV industry is pervasively regulated, the TLC regulations at issue still are unconstitutional. The City asserts a vague interest in combating driver fatigue and investigating incidents. These interests, even if worthy, do not come close to justifying the dragnet search the regulations impose.

Fourth, the analysis below, if adopted, would greatly contract businesses' Fourth Amendment rights. Government regulators have ever-growing incentives to get their hands on businesses' data. If the Fourth

Amendment protections in this area are so easily circumvented, it will be open season for regulators to require businesses to generate, retain, and disclose intimate information about their consumers. And ultimately it is consumers that suffer the consequences of these regimes.

The judgment below should be reversed.

ARGUMENT

I. The District Court Fundamentally Misunderstood the Role of Precompliance Review.

The district court held that even if the FHV industry does not fall within the “closely regulated industry” exception, the TLC regulations comply with the Fourth Amendment because regulated businesses have “an opportunity for pre-compliance review.” Opinion 40; *see id.* at 40-43. Under the Supreme Court’s precedent, warrantless administrative searches are lawful if “the subject of the search [is] afforded an opportunity to obtain precompliance review before a neutral decisionmaker.” *City of Los Angeles v. Patel*, 576 U.S. 409, 420 (2015). The district court observed that an FHV business may challenge agency action through the “Article 78” process in the New York state court system, and that no penalties would attach for noncompliance while an Article 78 challenge proceeded. Opinion 40-41; *see* N.Y. C.P.L.R. § 7803(3). In that state-court

proceeding, the court further explained, regulated businesses can assert their Fourth Amendment challenges to the City’s forced-disclosure regime. Opinion 41, 43. So, concluded the court, “the availability of judicial review under Article 78 provides [an] independent basis for why the challenged rules do not violate the Fourth Amendment.” Opinion 41.

The district court misunderstood the concept of precompliance review in the Fourth Amendment context. The “precompliance review” the Fourth Amendment demands is a proceeding in which the subject of an administrative search has the opportunity to challenge the scope of a targeted information request under the circumstances of a particular administrative need. *See Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 415 (1984) (precompliance review process “provide[s] protection for a subpoenaed employer by allowing him to question the reasonableness of the subpoena, before suffering any penalties for refusing to comply with it”); *See v. City of Seattle*, 387 U.S. 541, 544-45 (1967) (administrative search conducted pursuant to a subpoena, “and the subpoenaed party may obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply”).

Here, by contrast, the regulatory regime at issue requires businesses to turn over *all of their records all of the time*. In that scenario, “precompliance review” is simply a facial Fourth Amendment challenge filed in state court, of exactly the same sort that Wheely seeks to file in federal court.

To the extent the district court believed that the availability of an Article 78 challenge negates the Fourth Amendment *even in state court*, the result would be nonsensical: If Wheely brought an Article 78 challenge in state court, the state court would hold that the mere fact that the challenge is available necessarily establishes that the claim loses.

To the extent the district court believed that Wheely was required to bring a state-court Fourth Amendment challenge before suing in federal court, the court’s reasoning would effectively impose an exhaustion requirement for plaintiffs asserting 42 U.S.C. § 1983 claims. No such requirement exists, in part because such a requirement would strip the plaintiff of a federal forum: The state court’s disposition of the federal claim would be preclusive in federal court. *See Knick v. Township of Scott*, 588 U.S. 180, 188-89 (2019) (rejecting a requirement that Fifth Amendment Takings claims be asserted in state court, noting that

“Plaintiffs asserting any other constitutional claim are guaranteed a federal forum under § 1983”). Although the district court denied that it was imposing an exhaustion requirement and instead claimed that Article 78 was relevant to “the Fourth Amendment analysis itself,” Opinion 43, the practical effect of the district court’s ruling was to impose the type of exhaustion requirement that the Supreme Court forbids: Any Fourth Amendment claim would have to proceed in state court because the availability of a state-court action would doom the federal-court claim.

II. The District Court Took an Improperly Broad Approach to the “Closely Regulated Industry” Exception.

The district court’s second rationale is similarly infirm. The principle at this case’s core is that “[a]n owner or operator of a business . . . has an expectation of privacy in commercial property,” and that “[t]his expectation exists not only with respect to traditional police searches conducted for the gathering of criminal evidence but also with respect to administrative inspections designed to enforce regulatory statutes.” *New York v. Burger*, 482 U.S. 691, 699-700 (1987). The Supreme Court has carved out a “narrow exception” for certain industries deemed “pervasively regulated,” holding that businesses in these industries have a reduced expectation of privacy. *Patel*, 576 U.S. at 424; *see Burger*, 482 U.S.

at 702. When it comes to such industries, warrantless administrative searches are lawful even without an opportunity for precompliance review. *See Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312-13 (1978).

This exception applies to “industries ‘long subject to close supervision and inspection,’” and the Supreme Court’s cases applying it “represent responses to relatively unique circumstances.” *Marshall*, 436 U.S. at 313 (quoting *Colonnade Catering Corp. v. United States*, 397 U.S. 72, 74 (1970)). In fact, the Court “has identified only four industries that ‘have such a history of government oversight that no reasonable expectation of privacy . . . could exist for a proprietor over the stock of such an enterprise’”: selling liquor, dealing firearms, mining, and operating an automobile junkyard. *Patel*, 576 U.S. at 424; *see Colonnade Catering*, 397 U.S. at 72-74; *United States v. Biswell*, 406 U.S. 311, 311-12 (1972); *Donovan v. Dewey*, 452 U.S. 594, 596-97 (1981); *Burger*, 482 U.S. at 693-94.

The district court concluded that New York City’s FHV industry qualifies as a pervasively regulated industry that can be subject to warrantless administrative searches. Opinion 26-31. The court outlined the extensive regulatory requirements the City imposes on its FHV businesses: disclosures about ownership and organizational structure;

designation of agents for service; provision of contact information; registration requirements; background checks of managers and owners; posting bonds for, and staying current on, accrued fines and penalties; rules governing the contractual relationships between FHV businesses and drivers; vehicle inspection rules; etc. Opinion 26-28. As the court put it, the City (through the TLC) “leav[es] virtually no aspect of the FHV business unregulated,” which (in the court’s view) creates “precisely the conditions under which the Supreme Court has recognized diminished expectations of privacy.” Opinion 28. And the court was “satisfied,” too, “that the FHV industry presents risks to the public that justify comprehensive oversight.” Opinion 29-30.

This analysis does not withstand scrutiny, particularly given the Supreme Court’s admonition that the pervasively-regulated-industry exception is a narrow one. For starters, many of the regulatory requirements that fed into the district court’s pervasiveness finding are nothing more than general requirements that apply to all businesses involving licensure—if not all businesses entirely. For instance, the district court relied on the fact that FHV “[b]ase owners and controlling persons must be fingerprinted for ‘criminal history records.’” Opinion 27 (quoting 35

R.C.N.Y. § 59B-04(c)(1)). The same requirement applies as a matter of New York state law to “[a]ny employee who assists with the installation, maintenance or service of security or fire alarm systems.” 19 N.Y.C.R.R. § 195.8(b). The court also noted regulation of the manner in which drivers are paid. Opinion 27-28. But again, every business in New York City is subject to regulations relating to the manner in which it pays its employees. *See, e.g.*, 12 N.Y.C.R.R. § 142-2.1(a)(1) (establishing a \$17-per-hour minimum wage). Likewise, that FHV businesses cannot operate if they fail to satisfy conditions of licensure, or that there are fines and other administrative penalties available for regulatory violations, *see* Opinion 27-28, hardly differentiates the FHV industry from others in New York City.

Establishing that an industry is pervasively regulated—and thus fits within the narrow exception permitting warrantless administrative searches—requires more than simply rattling off a list of applicable regulatory requirements. For better or for worse, in virtually every locale and in virtually every sector, enumerating the extensive regulatory requirements imposed by state and local government upon a business would (and does) fill up volumes. Indeed, “[i]f such general regulations

were sufficient to invoke the closely regulated industry exception, it would be hard to imagine a type of business that would not qualify.” *Patel*, 576 U.S. at 425 (citing, *inter alia*, Brief for the United States Chamber of Commerce as *Amicus Curiae* at 12-13, *Patel*, 576 U.S. 409 (No. 13-1175), 2015 WL 429070).

The Supreme Court has never tethered a business’s reasonable expectation of privacy to the sheer number of regulations it faces. Instead, the key question is the *longstanding* nature of pervasive regulation in the particular industry. Dissenting in *Patel*, Justice Scalia emphasized the “duration of the regulatory tradition” as a key factor driving his conclusion that hotels were a pervasively regulated industry for Fourth Amendment purposes. 576 U.S. at 432 (Scalia, J., dissenting). He explained that “governments have long subjected these businesses to unique public duties” going back to the times of Blackstone and Story; that “[a]t the time of the founding, searches—indeed, warrantless searches—of inns and similar places of public accommodation were commonplace”; and thus that “the regulatory tradition governing motels [wa]s . . . longstanding.” *Id.* at 432-33.

Setting aside who had the better of the history in *Patel*, both sides of the debate accepted the premise that the exception requires a cemented history of pervasive regulation in an industry—something like hundreds of years in which governments control the minutia of business operations in a particular field, such that an entrant to the sector can earnestly be said to have no reasonable expectation of privacy. Or put succinctly: “a long tradition of close government supervision.” *Marshall*, 436 U.S. at 313. In *Colonnade Catering*, for instance, the government “relie[d] heavily on the long history of the regulation of the liquor industry during pre-Fourth Amendment days, first in England and later in the American Colonies.” 397 U.S. at 75.²

² A centuries-old history of pervasive regulation may not always be necessary in the case of a particularly urgent need for government oversight without warrants. So in *Biswell*, the Supreme Court held the exception applicable to the gun industry even though “[f]ederal regulation of the interstate traffic in firearms is not as deeply rooted in history as is governmental control of the liquor industry.” 406 U.S. at 315. But dealing in deadly weapons is a unique case in terms of the other relevant factors: “close scrutiny of this traffic is undeniably of central importance to federal efforts to prevent violent crime,” *id.*; “[i]n this context, the prerequisite of a warrant could easily frustrate inspection,” *id.* at 316; and “the possibilities of abuse and the threat to privacy are not of impressive dimensions,” *id.* at 317. None of this is true when it comes to inspecting the precise drop-off location of each and every livery passenger.

Compare that to the district court’s analysis here: to support the conclusion that “[t]he longstanding nature of the reporting requirement further confirms its reasonableness,” the court observed that “[t]he TLC has required FHV bases to report trip-level data—including pickup time and location—since at least 2015, and expanded those requirements in 2017 to include drop-off time and location,” with “[c]omparable trip-record reporting requirements” applicable to taxicabs since 1997. Opinion 37. The court also emphasized that “[m]ajor industry participants” had complied with these requirements over the decade in which they have been in effect and that “the current Rules have not been subject to a constitutional challenge before this action.” *Id.*³

³ The district court purported to rely on this Court’s precedent for the proposition that “the taxi industry is pervasively regulated by the [TLC].” Opinion 30 (alteration in original) (quoting *Statharos v. N.Y.C. Taxi & Limousine Comm’n*, 198 F.3d 317, 324 (2d Cir. 1999)). But *Statharos* made the comment about “pervasive[] regulat[ion]” as a colloquial matter; the case was not about administrative searches or even about the Fourth Amendment at all. *See* 198 F.3d at 322-27 (analyzing the constitutionally protected “individual interest in avoiding disclosure of personal matters” (quoting *Whalen v. Roe*, 429 U.S. 589, 599 (1977))).

In *Buliga v. New York City Taxi & Limousine Commission*, 324 F. App’x 82 (2d Cir. 2009) (per curiam), this Court summarily affirmed the dismissal of a pro se taxi driver’s Fourth Amendment claim relating to TLC regulations, though the district court’s opinion did not discuss the administrative-search doctrine. *Id.* at 82; *see Buliga v. N.Y.C. Taxi &*

The pervasively-regulated-industry exception does not work that way. That the open-records requirements are of relatively recent vintage should have been a strong indicator that the exception is *inapplicable*—a “tradition” of a decade or two of invasive regulation is not meaningful, particularly in an industry like for-hire transportation that has been operating for far longer than that. And that incumbent businesses have opted not to challenge these recent regulations should also carry no relevance; a newcomer’s Fourth Amendment rights do not evaporate based on the strategic choices of its forebears to cooperate with government regulators rather than go to the mat asserting their constitutional right to be free from warrantless searches. The scope of the Fourth Amendment’s protections has not changed since 2017, and the “use it or lose it’ theory” that the district court seemingly applied below “is wholly foreign to the [Fourth] Amendment.” *U.S. Telecom Ass’n v. FCC*, 855 F.3d 381, 429

Limousine Comm’n, No. 07-cv-6507, 2007 WL 4547738, at *1-4 (S.D.N.Y. Dec. 21, 2007), *aff’d*, 324 F. App’x 82. Likewise, *El-Nahal v. Yassky*, 993 F. Supp. 2d 460 (S.D.N.Y. 2014), *aff’d*, 835 F.3d 248 (2d Cir. 2016), involved a claim brought by a taxi driver and involved Fourth Amendment issues other than administrative searches and pervasively regulated industries. *See id.* at 464-65.

(D.C. Cir. 2017) (Kavanaugh, J., dissenting from the denial of rehearing en banc).⁴

III. An Administrative Search Is Reasonable Only When There Is a Nexus Between the Search and the Government Interest.

Even accepting the premise that for-hire transportation is pervasively regulated for Fourth Amendment purposes and thus businesses in the industry can be subject to warrantless searches, that is not the end of the inquiry under the Supreme Court’s precedent. There still must be a tight *nexus* between the administrative search and the “government interest that informs the regulatory scheme pursuant to which the inspection is made.” *Burger*, 482 U.S. at 702; *see Patel*, 576 U.S. at 426. In fact, the Supreme Court has explained that “the warrantless inspections must be ‘*necessary* to further [the] regulatory scheme.’” *Burger*, 482 U.S.

⁴ The district court also appeared to reject the argument “that the ‘closely regulated industry’ doctrine is limited to a narrow set of ‘intrinsically dangerous’ industries,” Opinion 29, though the court simultaneously concluded that the FHV industry *is* intrinsically dangerous, *see* Opinion 29-30. The Chamber agrees with Wheely that, properly understood, dangerousness is a limit on the exception, and that the FHV industry is not intrinsically dangerous for Fourth Amendment purposes. *See* Appellants’ Br. 25-30.

at 702 (alteration in original) (emphasis added) (quoting *Dewey*, 452 U.S. at 600).

A. The requirement that FHV businesses disclose the drop-off location from each and every ride in perpetuity fails this nexus requirement. In fact, it is difficult to understand how there is even a *rational* relationship between the stated government interest and the scope of the regulation, much less a properly tailored one.

As the district court noted, the TLC asserted two rationales for this requirement when it adopted it in 2017: that the data “would allow [the TLC] to calculate trip duration and more accurately assess driver fatigue,” and that the “information would also assist in investigating passenger complaints or complaints from a pedestrian or other motorist about unsafe driving.” Opinion 9 (internal quotation marks omitted). For starters, that the data is *useful* to the government is not the relevant question; rather, the question is whether the government needs to conduct warrantless searches to obtain the data. And there is no such need here: New York City’s interest in determining what driver was involved in a particular accident or was the subject of a customer complaint can be straightforwardly vindicated by simply requiring FHV businesses to

retain the relevant records and then presenting a targeted subpoena when the need for certain records arises. *Cf. Patel*, 576 U.S. at 422 (observing that on-demand searches of hotels were unnecessary given the lack of any evidence that targeted subpoenas were an insufficient mechanism).

At any rate, it is difficult to understand the relationship between the asserted interests and the disclosure requirement. Assuming that monitoring fatigued driving in the FHV industry is a sufficiently strong governmental interest, there is no reason a customer's drop-off location must be disclosed in order for that data to be collected. In fact, it would be far *easier* for the City to monitor the relevant dataset by simply collecting data on trip duration. It may be true that drop-off location allows the City to reconstruct trip duration and thus get the information it needs, but the same is true if the City were to put video cameras in every FHV automobile, or to require FHV drivers to undertake field sobriety tests every two hours. There must be a justification for the intrusiveness of the search, not just a vague explanation of why the information collected generally enables the City to examine some regulatory issue.

The second stated interest is no more compelling. Under the TLC regulation, the data need not be uploaded to the City's servers until the last day of the month *following* the one in which ride took place. *See* Opinion 11. Presumably, if there were a crash or a customer complaint, the City would be on notice far sooner than that. It is the lackadaisical regulator that responds to a complaint by a specific rider against a specific driver by saying that in 30-60 days, the data on that ride will appear in a massive dataset alongside hundreds of thousands of other rides from the same month.

B. In addition, it is highly questionable whether the exception for closely regulated industries could ever save a regulation such as the one here, which authorizes *perpetual* government inspection of businesses' records. The Supreme Court has explained that warrantless searches of closely regulated businesses comply with the Fourth Amendment only when what the statute or regulation authorizes "is carefully limited in time, place, and scope." *Biswell*, 406 U.S. at 315. In other words, when it comes to pervasively regulated industries, warrantless searches conducted pursuant to an authorizing statute or regulation are lawful because the regulatory program "provides a constitutionally adequate

substitute for a warrant.” *Dewey*, 452 U.S. at 603. Thus, the statute or regulation “must perform the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law *and has a properly defined scope*, and it must limit the discretion of the inspecting officers.” *Burger*, 482 U.S. at 703 (emphasis added).

None of the Supreme Court cases upholding warrantless administrative searches against pervasively regulated businesses were of the sort at issue here: where a business must turn over all of its records continuously and in perpetuity. If anything, the TLC regulations perform not the basic function of a search warrant contemplated by the Fourth Amendment, but of the impermissible *general* warrant that the Fourth Amendment was ratified to abolish—warrants “which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity.” *Riley v. California*, 573 U.S. 373, 403 (2014). Unlike statutes authorizing the government to inspect a business with some stated frequency, *see Dewey*, 452 U.S. at 603-04, or allow physical entry into a business to inspect specific records, *see Biswell*, 406 U.S. at 311-12, the regulation at issue here requires the prophylactic turnover of all

FHV business records from every ride, for all time. That appears quite like “general warrants”—warrants not grounded upon a sworn oath of a specific infraction by a particular individual, and thus not limited in scope and application.” *Maryland v. King*, 569 U.S. 435, 466 (2013) (Scalia, J., dissenting). And it raises serious questions as to whether such a scheme could ever be valid, even within the most pervasively regulated industry.

For its part, the district court concluded that the scope of the search was acceptable because the regulations “fix in advance what must be reported, by whom, and when, thereby limiting official discretion and providing notice to regulated entities.” Opinion 36. But this is a case where clarity and predictability of the regulatory scheme are a bug, not a feature: Requiring the turnover of “everything all the time” is precisely the type of regime the Fourth Amendment eschews.

IV. Adopting the District Court’s Flawed Analysis Would Create a Novel Threat to Businesses’ Fourth Amendment Rights.

The district court’s erosion of businesses’ Fourth Amendment protections poses particular concerns given rapid developments in what

regulators—and nefarious actors—can do with large datasets.⁵ As the proliferation of AI-assisted technologies makes it far easier for regulators to use data generated by businesses, there is no doubt that those regulators will seek to require businesses to turn over their data. It thus is imperative now more than ever to be zealous of businesses’ Fourth Amendment rights, recognizing that the information in which businesses have protected interests bears on their customers’ privacy as well.

The analysis below, however, provides a roadmap for the expansion of the “pervasively regulated business” exception, and thus for the evisceration of Fourth Amendment protections against suspicionless, warrantless searches of businesses’ records. First, by accepting that the exception can apply based on the volume of applicable regulations—without the need for any showing of inherent dangerousness of the industry or longstanding historical tradition of pervasive regulation—it is difficult to imagine what industries are not already (or will not soon be) pervasively regulated. If the fact of regulation itself is what diminishes businesses’

⁵ See *Consumer Data*, NielsenIQ, <https://nielseniq.com/global/en/info/consumer-data> (last visited July 1, 2026); Google Threat Intel. Grp., *Adversarial Misuse of Generative AI*, Google Cloud (Jan. 29, 2025), <https://cloud.google.com/blog/topics/threat-intelligence/adversarial-misuse-generative-ai>.

expectation of privacy, then the Fourth Amendment finds itself in a death spiral: As regulators pile on more and more regulations, and more and more disclosure obligations, businesses lose their rights to object.

It is also troubling that the district court treated as critical that incumbent FHV businesses subject to the TLC regulations at issue had complied without Fourth Amendment challenge. Such a rule creates a constitutional shot clock that would prejudice all future market entrants from asserting their rights—and therefore, as here, from choosing to vigorously compete for customers on the privacy dimension—so long as incumbents have opted (for whatever reason) to forgo such a challenge. *But see U.S. Telecom Ass’n*, 855 F.3d at 429 (Kavanaugh, J., dissenting from the denial of rehearing en banc).

And there is no real limit on what data the government can ultimately obtain through these warrantless “administrative searches.” The parties here do not discuss the requirement that FHV businesses actually *keep* the data at issue, aside from the requirement that they *disclose* it. But the recordkeeping and retention requirements become worrisome as well once combined with compelled-disclosure regimes: The government apparently can force businesses to collect whatever records on its

employees and customers it wishes and then invoke the “administrative search” doctrine to require the turnover of the entirety of that data, in perpetuity. In fact, under the reasoning applied below, the mere fact that the government *requires* the data to be kept would be the sort of pervasive regulation that, in bootstrapping fashion, negates the business’s right to object on Fourth Amendment grounds to the disclosure requirement.

All this might have been less problematic if not for the jettisoning of the nexus requirement. As explained above, administrative searches are permitted (either through precompliance review or against businesses in pervasively regulated industries) only where the search is required to further some critical regulatory interest. *See Burger*, 482 U.S. at 702. But as applied in this case, so long as the government articulates some plausible need for the information gleaned from the search, that is sufficient. That is not and has never been the law.

Finally, even setting aside the question of pervasively regulated businesses, the district court’s analysis of the precompliance-review requirement is deeply troubling, as it threatens the Fourth Amendment rights of *all* businesses—not just those in select industries (although, as

explained, the “pervasively regulated” club might be quickly expanding). Under the Supreme Court’s precedent, administrative searches are permissible if businesses are given the opportunity for precompliance review, *see Patel*, 576 U.S. at 420; here, the district court held that the opportunity to challenge a dragnet disclosure requirement under the Fourth Amendment qualifies as precompliance review, thus defeating the Fourth Amendment challenge, Opinion 40-43. That is not only circular and nonsensical; it is dangerous. It would mean every Fourth Amendment challenge to a freewheeling disclosure requirement is guaranteed to fail. And if it becomes the law, there is little remaining of businesses’ Fourth Amendment rights, despite the Supreme Court’s longstanding respect for the proposition that “[t]he businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property.” *See*, 387 U.S. at 543.

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted,

Date: July 2, 2026

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the word limit set forth in Federal Rule of Appellate Procedure 29(a)(5) and Second Circuit Local Rule 29.1(c) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), this brief contains **5,417** words.

I further certify that this brief complies with the typeface requirements set forth in Federal Rule of Appellate Procedure 32(a)(5)(A) and with the type-style requirements set forth in Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared using 14-point Century Schoolbook font in Microsoft Office Word 365.

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CERTIFICATE OF SERVICE

I hereby certify that on this day, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system, which will send notice to all the parties.

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