C.A. No. 25-228

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UBER TECHNOLOGIES, INC., AND PORTIER, LLC,

Plaintiffs-Appellants,

MAPLEBEAR INC., D/B/A INSTACART,

Intervenor-Plaintiff,

v.

CITY OF SEATTLE,

Defendant-Appellee.

On Appeal from the United States District Court
for the Western District of Washington (Seattle)
D. Ct. No. 2:24-cv-02103-MJP
The Honorable Marsha J. Pechman, District Judge

BRIEF OF *AMICI CURIAE* LOCAL GOVERNMENTS IN SUPPORT OF DEFENDANT-APPELLEE CITY OF SEATTLE

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INTEREST OF *AMICI CURIAE*

Amici are the cities of Portland, Oregon and San Diego, California.[1] *Amici* write in strong support of the City of Seattle in these related appeals. Local governments have long-established authority to protect the health and welfare of their residents, including as consumers, tenants, and workers. Local governments often exercise this authority by passing legislation to improve information and transparency at the point of a transaction or as part of the interaction between an individual and a business. Laws that improve transparency can be crucial to protect rights because there is often an information asymmetry between individuals and businesses. In fact, *Amici* have collectively found through their policy-making experience that ensuring transparency and providing affected individuals with notice of their rights are crucial to securing compliance with substantive regulations. As set forth below, notice, disclosure, and other information-sharing requirements are, therefore, prevalent in laws at the local, state, and federal levels, including laws passed by *Amici* cities.

In these cases, Appellants seek to undermine government efforts to protect consumers, workers, tenants, and other individuals. *Amici* have a solemn duty to

[1] No party or party's counsel authored this brief in whole or in part. No person other than *amici curiae*, including no party or party's counsel, contributed money intended to fund preparation or submission of this brief. Pursuant to Fed. R. App. P. 29(a)(2), all parties have consented to the filing of this brief.

protect the health, safety, and welfare of their communities—especially that of the most vulnerable. Appellants' efforts to manufacture new First Amendment protections at the expense of crucial local regulatory functions is dangerous, ill-considered, and contrary to precedent. For those reasons and the reasons provided in this brief, *Amici* Local Governments urge this Court to affirm the decision below.

SUMMARY OF ARGUMENT

Seattle's App-Based Worker Deactivation Rights Ordinance (the "Ordinance") adopts an approach to economic regulation that is common across diverse areas of public policy: it enacts substantive protections and requires covered businesses to develop internal policies that comply with the substantive law and to notify affected parties of those policies. The Ordinance also requires businesses to provide individualized information to workers who are subject to adverse decisions under the companies' employment policies. Notice and disclosure requirements such as these—including those that require the provision of information particular to the requesting individual—correct information asymmetries and ensure that workers, tenants, consumers, and the public are both aware of their rights and can make informed decisions. Accordingly, federal, state, and local laws are replete with notice and disclosure requirements. Such requirements ensure, to name just a few examples, that workers know their rights in the workplace, that prospective property purchasers are aware of property defects, that parents and regulators know when

childcare facilities experience outbreaks of communicable diseases, and that consumers know when a security breach has affected their personal data.

The public policy value of notices and disclosures, of course, does not negate the fact that businesses have First Amendment rights, and federal courts, including this Circuit, have established comprehensive frameworks for ensuring that government regulations do not infringe unnecessarily or too significantly on a company's speech and that any regulations that affect speech are properly tailored to further legitimate government purposes. But Appellants Uber Technologies, Inc., Portier, LLC, and Instacart[2] and their *amici* attempt to wield the First Amendment to undercut a legitimate, widespread, and longstanding type of regulation of economic activity. If their argument prevails, it would have far-ranging impacts on a myriad of laws that are essential to the functioning of the economy and to the public welfare. As set forth below, the district court correctly found no First Amendment violation. To rule otherwise would imperil a range of protections set out across federal, state, and local laws.

[2] *Amici* Local Governments refer collectively to Uber Technologies, Inc., Portier, LLC, and Maplebear Inc. (d/b/a Instacart) as "Appellants" throughout, and specify the party name when referring only to one of the parties.

ARGUMENT

I. LEGISLATION REGULATING THE ECONOMY BY REQUIRING NOTICE OR DISCLOSURE IS WIDESPREAD AND ESSENTIAL TO THE PROTECTION OF WORKERS AND THE PUBLIC

Accepting Appellants' and their *amici*'s theory of how the First Amendment applies to Seattle's Ordinance would call into question a myriad of laws on which workers, consumers, and the public more broadly rely to make informed decisions and to understand their rights. Cities, states, and the federal government enact substantive regulations that require notice or disclosure as part of statutory schemes to protect public health, safety, privacy, and fairness in commercial transactions, among other policy goals. Notice and disclosure requirements are prevalent across a wide range of issue areas including employment, real estate, health, data privacy, and consumer protection. The mechanics of these laws vary—some require companies to provide information about internal policies, others require companies to provide general information about rights under state or local law (often using templates provided by relevant agencies), and still others require disclosures of objective data and information related to health and safety. Yet in each case, this type of regulation requires companies to provide information that they may not otherwise choose to provide and without which an information asymmetry would undermine social welfare.

A. Laws Enacted at All Levels of Government Require the Issuance of Policies or Disclosures Similar to the Seattle Ordinance

1. Workplace Protections

Seattle's Ordinance is one of many laws in the employment sphere that require employers to develop internal workplace policies—which must be consistent with the relevant substantive worker protections—and to *distribute* those policies to employees or prospective employees. For example, California law requires employers to "develop and distribute to its employees a harassment, discrimination, and retaliation prevention policy" that is consistent with the protections guaranteed under state law. CAL. CODE REGS. Tit. 2, § 11023, subd. b.

Municipal ordinances across the Circuit similarly require employers to develop and distribute workplace policies related to employee rights. For instance, the City of San Francisco's Lactation Ordinance creates substantive rights regarding lactation accommodation in the workplace, requires covered employers to create a conforming internal written lactation accommodation policy, and compels employers to distribute their internal policy to all employees upon hiring and to any employee upon request, and to include the policy in any employee handbook. S.F., CAL., MUN. CODE, § 31.5.

Similarly, the City of Los Angeles's Fair Chance Initiative for Hiring Ordinance requires employers to include an affirmative statement in job postings

that they will consider applicants with criminal histories. L.A., CAL., MUN. CODE, § 189.03. Likewise, Seattle's Paid Sick Leave and Safe Time Law requires employers to notify employees of their right to paid sick leave, both through posting a standard government notice and by providing company-specific information about the internal sick leave policy. SEATTLE, WASH., MUN. CODE § 14.16.045.[3]

As these examples illustrate, the approach Seattle has adopted in the Ordinance—requiring notice to workers of workplace policies—is widespread. Governments commonly enact substantive worker protections, require employers to develop compliant internal policies, and require employers to notify employees or potential employees of those policies. In fact, as the Second Circuit recently observed in upholding a law similar to Seattle's Ordinance that required employers to provide workers with notices of their rights, there are "many [] state and federal laws requiring workplace disclosures – in employee handbooks or through other means, and by all employers or certain categories of employers – of health, safety, and civil rights information." *CompassCare v. Hochul*, 125 F.4th 49, 65 (2d Cir. 2025).

[3] As Seattle points out in its brief, Appellants are also subject to other municipal ordinances enacted by the City that require employers to have agreements in writing and to notify workers of their rights. *See* Appellee Br. at 12. For instance, Seattle's App-Based Workers Minimum Payment Ordinance requires network companies to provide workers with a notice of their rights regarding minimum payments. SEATTLE, WASH., MUN. CODE § 8.37.100.

This legislative approach makes sense. Governments have determined that to achieve certain policy goals it is necessary not only to enact substantive protections but also to ensure that affected persons are informed of their rights and of the specific internal policies that affect their working conditions.

2. Housing Transactions

For similar public policy reasons, notice and disclosure requirements are common in relation to a wide range of commercial transactions outside of the employment context. Notices of rights and disclosures are fundamental to ensuring fairness in housing transactions, both between landlords and tenants and between sellers and buyers. For example, state residential real estate sales laws require homeowners to disclose known property defects to a potential buyer so the buyer may make an informed decision about the purchase. ALASKA STAT. § 34.70 *et seq*.; CAL. CIV. CODE § 1102 *et seq*.; HAW. REV. STAT. §§ 508D-1, 508D-4; IDAHO CODE §§ 55-2504, 55-2506; NEV. REV. STAT. § 113.100 *et seq*.; OR. REV. STAT. § 105.465; WASH. REV. CODE § 64.06.020. Similarly, as part of a statutory scheme aimed at reducing exposure to lead paint, federal law requires home sellers and lessors to disclose the presence of lead paint, ensuring that potential buyers and lessees are informed of the health risks associated with lead paint exposure and the remediation costs of its removal. 42 U.S.C. § 4852d. Several cities also require landlords to include notices regarding tenants' rights when advertising rental housing. For

instance, Portland, Oregon requires landlords to include in any advertisement for a vacant unit a notice of a tenants' right to request a reasonable disability-related modification or accommodation. PORTLAND, OR., CITY CODE § 30.01.086, subd. (C) 3. Portland also requires landlords that charge a screening fee to include "a description of the landlord's screening criteria and evaluation process." *Id.* Similarly, the City of San Diego requires residential landlords to notify tenants of applicable limits on rent increases and to provide tenants with copies of a tenant protection guide produced by the local government. SAN DIEGO, CAL., MUN. CODE § 98.0705 ("Notice to Tenant of Residential Tenant Protections").

Notice requirements also are essential to protecting homeowners' and debtors' rights as they relate to foreclosure proceedings. All the states within the Ninth Circuit require creditors to give notice to a debtor before selling repossessed property. While details vary by state, these laws generally require the creditor to provide a pre-sale notice of the date, time, and method of sale as well as notice that the debtor may reclaim their property by paying the amount owed. *See* ALASKA STAT. §§ 45.29.611–.614; ARIZ. REV. STAT. § 47-9611; CAL. COM. CODE §§ 9611-9614; IDAHO CODE § 28-9-611; HAW. REV. STAT. §§ 490:9-611; MONT. CODE ANN. § 30-9A-611; NEV. REV. STAT. § 104.9611; OR. REV. STAT. § 79.0611; WASH. REV. CODE § 62A.9A-611.

3. Data Privacy and Security

Notice and disclosure requirements are similarly common regarding consumer data collection and security. Online privacy laws in several states require internet companies to disclose to online consumers information about the consumers' personal data that the companies collect and sell. *See*, *e.g.*, CAL. CIV. CODE § 1798.100(A) (California Consumer Privacy Act); MONT. CODE ANN. § 30-14-2812 (Montana Consumer Data Privacy Act). Likewise, when a company experiences a data security breach, state laws in each state within the Circuit require businesses to communicate specific information to affected persons so that they may take steps to protect their identities and credit. ALASKA STAT. §§ 45.48.010–45.48.040; ARIZ. REV. STAT. §§ 18-552, 18-545; CAL. CIV. CODE §§ 1798.29, 1798.82; IDAHO CODE § 28-51-105; HAW. REV. STAT. § 487N-1 *et seq.*; MONT. CODE ANN. §§ 30-44-101,13-44-301; NEV. REV. STAT. § 603A.220; OR. REV. STAT. §§ 646A.600–646A.628; WASH. REV. CODE §§ 19.255.010, 42.56.590. For example, in Arizona, any company that determines there has been a customer data security breach must notify affected consumers within forty-five days, stating the date of the data breach and describing the personal information included in the breach, and must also provide phone numbers for credit reporting agencies and the federal agencies responsible for identity theft. ARIZ. REV. STAT. §§ 18-552, 18-545.

4. Higher Education

Institutions of higher education and loan financiers are required to make disclosures that allow potential students to determine whether the education or loan is an adequate bargain. Private lenders who made federally insured student loans must disclose loan information and repayment options, including actual interest rate charged; estimated total amount of interest to be paid on a loan assuming payments made in accordance with the repayment schedule; explanation of fees charged; and resources such as loan repayment assistance. 34 C.F.R. § 682.205. Institutions of higher education must disclose financial assistance options, graduation rates, and job placement rates. 34 C.F.R. § 668.41.

5. Childcare

As one further example, notice and disclosure requirements are also integral to regulation of licensed childcare facilities, ensuring that families and regulatory agencies have the information necessary to maintain the safety of young children. First, many states require childcare facilities to adopt, maintain, and make available internal policies regarding their services and operations. *See generally* ARIZ. REV. STAT. § 36-883.01 (requiring that written statement of services be available to parents and administrators); ARIZ. ADMIN. CODE § 9-5-303 (requiring childcare facilities to conspicuously post general information about services and policies); OR. REV. STAT. § 414-305-0200 (requiring childcare facilities to adopt comprehensive

written policies, which must include information about health, safety, and emergency preparedness, and to provide those policies to staff and parents). Many of these laws also require childcare facilities to post or provide notices to parents of information about incidents related to health and safety. For example, Arizona requires facilities to post notices regarding any incidents of communicable diseases and sanctions by regulatory agencies, ARIZ. ADMIN. CODE § 9-5-303; Nevada requires facilities to post the grade the facility receives from the state regulatory agency, NEV. REV. STAT. § 432A.184; and Washington requires licensed childcare facilities to make available copies of inspection reports and information related to any administrative enforcement actions, WASH. REV. CODE § 43.216.689. These laws requiring transparency in the provision of childcare, which are critical for child safety, are among the laws that would be called into question should this Court accept Appellants' First Amendment theory.

These are but a few examples of the many notice and disclosure requirements across a range of substantive areas that federal, state, and local governments have enacted to further legitimate policy goals. As these examples illustrate, legislatures commonly determine that substantive regulation must be coupled with notice to affected parties for legislation to be effective. The viability of these and similar notice and disclosure requirements will be affected by the outcome of this appeal.

B. Disclosure of Bases for Individualized Determinations Support Substantial Government Interests

In a variety of regulated areas, legislatures have determined, as Seattle did, that individuals should be entitled to particularized information about their important economic interests, such as their housing or credit. Required disclosures of individualized determinations are found in a variety of consumer protection laws. For example, the Federal Real Estate Settlement Procedures Act (RESPA) requires loan servicers to provide borrowers with complete information about their loan account (or to respond to requests indicating the requested information is not available), allowing the borrower to identify any errors in their account. 12 C.F.R. § 1024.36. Consumer education and accuracy goals also underlie Washington insurance code, WASH. REV. CODE § 48.18.290, which requires the insurer to give notice of their "actual reason" for canceling a policy, allowing consumers to correct errors and to take steps to prevent future cancellations.

Similarly, the Fair Credit Reporting Act requires all credit reporting agencies, upon request from a consumer, to disclose in writing all information in that consumer's file. 15 U.S.C. §§ 1681g, 1681h (Fair Credit Reporting Act § 609a). According to the Consumer Financial Protection Bureau, Congress enacted this protection as a means of increasing transparency and accuracy in credit reporting, considering "[t]he potential for the vast quantity of information contained in

consumer files to include errors [which] poses significant risks to accuracy, fairness, and consumer privacy in the consumer reporting system."[4]

Requiring individualized disclosures can help to prevent arbitrary, retaliatory, or discriminatory action, as Seattle seeks to do in the challenged Ordinance. Similarly, ordinances requiring good cause for eviction typically require a landlord to give individualized notice of the reason(s) they seek to recover possession of the rental unit. CAL. CIV. CODE § 1946.2 (reasons for eviction "shall be stated in the written notice to terminate tenancy"); OR. REV. STAT. § 90.427 ("the landlord may terminate the tenancy only … [f]or a tenant cause and with notice in writing"); BERKELEY, CAL. MUN. CODE § 13.76.130 (landlord must "specify just cause"—such as nonpayment of rent or owner move-in—"in the notice of termination" for the notice to be effective).

Accordingly, Appellants' theory of the First Amendment as it applies to the Ordinance's required notice of deactivation and access to records substantiating deactivation (§§ 8.40.070 and 8.40.080), threatens to upend transparency and abuse-prevention mechanisms that are present across a wide swath of laws.

[4] Fair Credit Reporting; File Disclosure, 89 Fed. Reg. 4167. (Jan. 23, 2024), https://perma.cc/67CP-JS84.

II. SEATTLE'S APP-BASED WORKER DEACTIVATION RIGHTS ORDINANCE DOES NOT VIOLATE APPELLANTS' FIRST AMENDMENT SPEECH RIGHTS

It is well established that legislatures may regulate economic activity to protect public welfare. *Munn v. People of State of Illinois*, 94 U.S. 113, 125 (1876) ("The government regulates the conduct of its citizens one towards another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good."). As the district court correctly held, if a law that regulates economic activity burdens a business's speech only incidentally, it does not raise First Amendment concerns. Excerpts of Record ("ER") 8-13, Case No. 25-228; ER 14-19, Case No. 25-231. Moreover, while regulations that place more than an incidental burden on commercial speech are subject to First Amendment scrutiny, the regulation must only be reasonably related to a substantial government interest to survive First Amendment review, if they compel only uncontroversial factual statements as they do here. This is true whether the affected speech is directed at consumers or at a business's employees or contractors.

Numerous laws at federal, state, and municipal levels that create substantive rights and regulate economic activity include notice or disclosure requirements, as discussed in Part I, *supra*. Here, the City of Seattle, based on extensive fact gathering and input from stakeholders, chose to regulate the relationship between network companies and their app-based workers regarding the bases and process for

terminating, or "deactivating," workers. The Ordinance establishes a substantive statutory scheme governing deactivations and provides a framework for when companies can lawfully deactivate app-based workers. As part of that scheme the Ordinance requires network companies to give their app-based workers "fair notice" of what conduct will result in their deactivation by creating a deactivation policy that is consistent with the Ordinance and distributing that policy to workers. SEATTLE, WASH., MUN. CODE § 8.40.050. Whether it is an economic regulation that incidentally burdens speech or a regulation of commercial speech, Seattle's Ordinance serves a substantial government interest that minimally burdens speech and should therefore be upheld.

A. The District Court Correctly Held that the Ordinance's Impact on Speech Is Incidental to the Substantive Limits on Worker Deactivation and Not Subject to First Amendment Scrutiny

Courts have long recognized that legitimate regulation of economic activity in service of a range of public policy goals may have some incidental impact on speech without implicating a business's First Amendment rights. "[A]n entity 'cannot claim a First Amendment violation simply because it may be subject to . . . government regulation.'" *Am. Soc'y of Journalists & Authors, Inc. v. Bonta*, 15 F.4th 954, 961 (9th Cir. 2021) (quoting *Univ. of Pennsylvania v. E.E.O.C.*, 493 U.S. 182, 200 (1990)). As the U.S. Supreme Court recently affirmed, "[t]he First Amendment does not prevent restrictions directed at commerce or conduct from imposing

incidental burdens on speech." *Nat'l Inst. of Fam. & Life Advocs. ("NIFLA") v. Becerra*, 585 U.S. 755, 769 (2018) (quoting *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011)).

Whether an economic regulation's impact on speech is incidental and thus not subject to First Amendment scrutiny, or is compelled speech protected by the First Amendment, necessarily requires a factual analysis that examines the purpose, operation, and specific effect on speech of any challenged piece of legislation. *See NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1117 (9th Cir. 2024) (contrasting cases involving conduct regulations that incidentally burdened speech with cases involving compelled commercial speech); *see also Sorrell*, 564 U.S. at 567 (describing cases in which impacts on speech were incidental to restrictions on conduct and commerce).

For example, in *Rumsfeld v. Forum for Academic & Institutional Rights, Inc. ("FAIR II")*, the U.S. Supreme Court concluded that a law requiring universities to provide military recruiters with the same access as other recruiters did not trigger First Amendment scrutiny because any communication by the university was incidental. 547 U.S. 47, 61–63 (2006). The First Amendment's protections against compelled speech play a critical role in our constitutional system and ensure, for example, that the government cannot "forc[e] a student to pledge allegiance to the flag… or forc[e] a Jehovah's Witness to display a particular motto on his license

plate[.]" *Id.* at 48 (internal citations omitted). The Supreme Court in *FAIR II* cautioned that conflating incidental impacts on speech associated with legitimate regulations "trivializes the freedom protected" in well-established precedent. *Id.*

First Amendment protections apply to regulations that may incidentally affect speech only when one of the following "threshold" conditions are met: [1] "conduct with a 'significant expressive element' drew the legal remedy" or [2] "the ordinance has the inevitable effect of 'singling out those engaged in expressive activity.'" *Int'l Franchise Ass'n, Inc. v. City of Seattle*, 803 F.3d 389, 408 (9th Cir. 2015) (quoting *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 706–07 (1986)); *see also HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 685 (9th Cir. 2019). As to the first prong, conduct is deemed expressive when it is intended to "carry a message." *Arcara*, 478 U.S. at 702 (explaining that in *United States v. O'Brien*, 391 U.S. 367 (1968), the conduct of burning a draft card was expressive in so far as it was intended to carry a political message). The second prong is satisfied when legislation of conduct "impose[s] a disproportionate burden upon those engaged in protected First Amendment activities." *Id.* at 704*; see also Minneapolis Star & Trib. Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 585 (1983) (striking down tax on newsprint and ink because of disproportionate impact on newspapers). In answering the threshold question of whether the First Amendment applies to regulation of

conduct, "a statute's stated purpose[] may also be … considered." *Sorrell*, 564 U.S. at 565.

The Ordinance here regulates the conduct of deactivating app-based workers. Seattle's stated purpose for passing the Ordinance is to "protect[] and promote[] public health, safety, and welfare by establishing protections against unwarranted deactivations for app-based workers." ER 9, Case No. 25-228; ER 15, Case No. 25-231 (Ord. § 1(C)). As ably argued in Seattle's responsive brief, this threshold inquiry points toward Seattle's Ordinance not triggering First Amendment scrutiny because the Ordinance is neither aimed at "conduct with a significant expressive element" nor is it "singling out those engaged in expressive activity."[5] Appellee Br. at 21–26.

[5] Appellants Uber Technologies, Inc. and Portier, LLC claim that this Court "observed" in *X Corp. v. Bonta*, 116 F.4th 888 (9th Cir. 2024), that a law requiring disclosure of a company's "existing terms of service" triggers First Amendment scrutiny. *See* Appellants Uber Technologies, Inc. and Portier, LLC's Opening Brief at 21. These Appellants misconstrue *X Corp.* on this point. Although the Appellants in *X Corp.* initially challenged a provision of AB 587 requiring that social media companies publicly post their terms of service, the district court denied X Corp.'s motion for preliminary injunction on that issue, and X Corp. did not appeal that ruling. 116 F.4th at 898. In ruling on the mandated reports that *were* at issue on appeal, this Court noted that those reports, as one factor in holding that they did not constitute commercial speech, did not "merely disclose existing commercial speech." *Id.*

B. At Most, the Ordinance Regulates Commercial Speech and Is Subject to Deferential Review

Even if, as Appellants argue, the disclosure requirement of the Ordinance is speech subject to First Amendment scrutiny, it is properly classified as commercial speech that discloses uncontroversial factual information and is thus subject to a form of scrutiny akin to rational basis review. This Court's jurisprudence establishes clearly that governments may legislate to require businesses to disclose information or provide notice to the general public, to consumers, or to their workers in service of policy goals related to fairness, public health, safety, and economic stability. Such jurisprudence offers wide latitude to local, state, and federal authorities to impose notice and other disclosure requirements as discussed in Part I, *supra*.

As this Court recently explained in *X Corp.*, while intermediate scrutiny applies generally to commercial speech, "an exception applies to compelled commercial speech that is 'purely factual and uncontroversial.'" 116 F.4th at 900 (quoting *Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1266 (9th Cir. 2023)). "'In that scenario, the government need only demonstrate the compelled speech survives a lesser form of scrutiny akin to a rational basis test.'" *Id.* at 900 (quoting *Nat'l Wheat*, 85 F.4th at 1266). The Supreme Court articulated this standard in *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985) and this Court has affirmed that *Zauderer* continues to apply to

compelled commercial speech. *Am. Beverage Ass'n v. City & Cnty. of San Francisco*, 916 F.3d 749, 756 (9th Cir. 2019).

In applying the *Zauderer* standard, a compelled disclosure is deemed "uncontroversial" if it "does not force [regulated entities] to take sides in a heated political controversy." *CTIA - The Wireless Ass'n v. City of Berkeley, Cal.*, 928 F.3d 832, 848 (9th Cir. 2019). "Thus, a disclosure may be 'purely factual and uncontroversial' although it disturbs the party being compelled to make the disclosure." *Nationwide Biweekly Admin., Inc. v. Owen*, 873 F.3d 716, 732 (9th Cir. 2017); *see also CompassCare*, 125 F.4th at 65 ("The required disclosure of the existence and basic nature of an otherwise-valid statute is similar to the mandated commercial disclosures at issue [in *Zauderer*], and a far cry from the sort of mandated 'confess[ion]' of 'what shall be orthodox in politics, nationalism, religion, or other matters of opinion' at issue in other cases." (quoting *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)).

When factual disclosures in commercial speech are at issue, the applicable level of scrutiny is as follows: "the government may compel truthful disclosure in commercial speech as long as the compelled disclosure is 'reasonably related' to a substantial governmental interest." *Am. Beverage Ass'n*, 916 F.3d at 755 (quoting *Zauderer*, 471 U.S. at 651). A "substantial" health and safety interest is one that is

"'potentially real not purely hypothetical.'" *CTIA*, 928 F.3d at 844 (quoting *NIFLA*, 585 U.S. at 757).

Applying this framework, this Court has regularly upheld disclosure requirements similar to the one at issue in this case. For example, in *CTIA*, this Court held that a city ordinance requiring cell phone retailers to disclose information about radio-frequency exposure to consumers was essentially a safety warning that was properly deemed commercial speech that required a purely factual disclosure. 928 F.3d at 847–48. Similarly, in *San Francisco Apartment Association v. City and County of San Francisco*, this Court considered a challenge to a San Francisco ordinance that required landlords to inform tenants of their rights in lease buy-out negotiations and to provide contact information for nonprofit tenants' rights organizations before the landlord could commence buyout negotiations. 881 F.3d 1169, 1174 (9th Cir. 2018). This Court determined that the required disclosures were purely factual commercial speech and therefore the disclosure requirement need only be reasonably related to a substantial governmental interest, a test the law satisfied. *Id.* at 1177–1178; *see also Nationwide Biweekly Admin., Inc.*, 873 F.3d at 734 (finding requirement that mortgage service companies disclose lack of authorization

for its financial services solicitation reasonably related to preventing consumer deception).[6]

1. The Ordinance's Requirements Are Factual and Uncontroversial

As described in Part I, *supra*, laws requiring companies to inform employees, consumers, or the public of a policy and of their rights under that policy are common across a diverse range of issue areas and play an essential role in regulating businesses to serve the public good. In this case, the information the Seattle Ordinance requires companies to convey is factual information about the content of a workplace policy.

The Ordinance requires a network company to craft and give notice of a deactivation policy that is "reasonably related to the network company's safe and efficient operations." ER 4, Case No. 25-228; ER 42, Case No. 25-231 (Ord. § 2). If a network company deactivates an app-based worker's account, the company must give "[t]he reasons for deactivation." ER 24, Case No. 25-228; ER 46, Case No. 25-231. (Ord. at p. 22 (SEATTLE, WASH., MUN. CODE § 8.40.070 (Notice of

[6] *Zauderer* does not apply, and stricter scrutiny is applied, only when legislatively mandated disclosures compel entities to present disputed information as fact or to take a position on a controversial issue. *See, e.g.*, *Nat'l Ass'n of Wheat Growers*, 85 F.4th at 1278–80 (9th Cir. 2023) (warning related to carcinogenicity of agricultural chemical, which was highly disputed in scientific community, was neither factual nor uncontroversial under *Zauderer*); *NIFLA*, 585 U.S. at 768–69 (holding *Zauderer* standard did not apply to law requiring crisis pregnancy to provide clients with information about state-sponsored abortion access services).

Deactivation))). In other words, a network company must disclose factual information about the contents of its policy and the reasons for adverse action.

Appellants and their *amici* protest that the requirements are controversial because they are unwanted. The fact that the policy itself must comply with the substantive prohibitions of the Ordinance, however, does not transform the notice requirement into a restriction on speech that warrants heightened scrutiny. Appellants have no First Amendment or other constitutional right to create and publish an unlawful employment policy. *See HomeAway.com, Inc.*, 918 F.3d at 686 ("[A]ny First Amendment interest . . . is altogether absent when the commercial activity itself is illegal and the restriction on advertising is incidental to a valid limitation on economic activity.") (quoting *Pittsburgh Press Co. v. Pittsburgh Comm'n on Hum. Rels.*, 413 U.S. 376, 389 (1973)). Neither does the fact that Appellants disagree as a policy matter with the City's determination on how to regulate app-based worker deactivations make the required policy disclosures controversial. The Ordinance's restrictions on deactivation of app-based workers were duly passed into law. They do not force Appellants to take sides in a "heated political controversy." *CTIA*, 928 F.3d at 848. Accordingly, their existence and Appellants' obligation to comply with them are not controversial.

2. The Ordinance's Deactivation Policy and Explanation and Substantiation Policy Requirements Are Reasonably Related to a Substantial Government Interest

Seattle's Ordinance is undoubtedly reasonably related to a substantial governmental interest. The Seattle City Council, having considered data and testimony from diverse stakeholders, determined that regulation of the bases and process for terminating app-based workers is necessary to achieve fairness and economic stability in a growing sector of the economy. *See* ER 25–29, Case No. 25-231. These are substantial government interests.

The mechanisms the City Council chose to employ are also reasonably designed to further those interests. Section 8.40.050(1) requires app-based businesses to give "fair notice of deactivation policy" to workers in language "specific enough" for a worker "to understand what constitutes a violation and how to avoid violating the policy." Section 8.40.100 requires app-based businesses to give workers a "notice" of "rights under this Chapter." Requiring companies to create internal policies consistent with the law is a reasonable means to ensure that the companies do in fact follow the law—it makes good business sense that committing a policy to paper will increase the likelihood that a company adheres to it, furthering the policy goal of combatting unwarranted and unlawful deactivations. Likewise, requiring businesses to provide notice to workers of policies governing termination is reasonable and further supports the goal of combatting unwarranted

deactivations by increasing transparency and allowing workers to challenge deactivations that do not appear to comport with the governing policy. The fit between Seattle's Ordinance and the legitimate policy goals of protecting app-based workers and ensuring economic stability is more than sufficient to satisfy the applicable test.

CONCLUSION

The district court properly held that Seattle's regulation of the deactivation of app-based workers does not run afoul of the First Amendment. For these reasons, the district court's decision denying a preliminary injunction should be affirmed.

Respectfully submitted,

/s/ Jonathan B. Miller

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Dated: March 18, 2025

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STATEMENT OF RELATED CASE

In accordance with Circuit Rule 28-2.6, proposed Amici identifies the following related case:

- *Maplebear Inc., et al. v. City of Seattle*, Case No. 25-231. This case is an appeal arising from the same Order denying a request for a preliminary injunction.

/s/ Jonathan B. Miller
Jonathan B. Miller
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Dated: March 18, 2025

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Signature */s/ Jonathan B. Miller* **Date:** March 18, 2025

Jonathan B. Miller, Public Rights Project

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was this day served on all counsel via the court's electronic service system.

/s/ Jonathan B. Miller
Jonathan B. Miller
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Dated: March 18, 2025