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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SAN FRANCISCO

11  
12 PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

15 UBER TECHNOLOGIES, INC., A  
16 DELAWARE CORPORATION; LYFT, INC.,  
A DELAWARE CORPORATION; AND  
17 DOES 1-50, INCLUSIVE,

18 Defendants.

Case No.: CGC-20-584402

**[PROPOSED] BRIEF FOR *AMICI*  
*CURIAE* COMMUNITIES-OF-COLOR  
ORGANIZATIONS IN SUPPORT OF  
UBER TECHNOLOGIES, INC. AND  
LYFT, INC.'S OPPOSITION TO MOTION  
FOR PRELIMINARY INJUNCTION**

Hearing Date: August 6, 2020  
Hearing Judge: Hon. Ethan P. Schulman  
Time: 1:30 p.m.  
Dept: Department 32

Trial Date: None set  
Complaint Filed: May 5, 2020

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1 **INTRODUCTION**

2 Millions of workers in the State of California—many of whom are workers of color—  
3 earn income in the “gig economy” because, as independent contractors, they have the freedom to  
4 decide when, where, and how they make money. These workers value this flexibility, which  
5 allows them to organize their work schedules around child-, elder- or family-care, or other  
6 responsibilities. The gig economy allows workers to earn supplemental income when necessary  
7 to pay bills or to cover unexpected expenses, or to earn money through work on competing  
8 platforms—such as workers driving for both Uber and Lyft. In addition to these valuable work  
9 opportunities, the gig economy has brought critically needed transportation and delivery services  
10 to minority communities historically underserved by traditional businesses. The State of  
11 California and communities of color throughout the state have enjoyed these benefits.

12 But in this lawsuit, the State of California seeks an injunction to impose a one-size-fits-all  
13 employee model on gig economy workers. Most of them do not want to be employees. Not only  
14 will the injunction deprive them of the flexibility to decide when, where, and how many hours to  
15 work, it will also cause ridesharing companies to dramatically reduce the number of drivers  
16 using their platforms, with a resulting reduction in rideshare services in the State.

17 These effects will be particularly acute for workers and communities of color. Under the  
18 injunction, many workers of color stand to lose untold amounts of income from the gig economy,  
19 and communities of color will lose critical transportation services in areas historically  
20 underserved by traditional transportation companies like taxicab services—which have  
21 historically discriminated against members of those communities.

22 This harm would be particularly egregious in light of the ongoing COVID-19 pandemic.  
23 The pandemic has devastated communities of color, who are disproportionately likely to contract  
24 COVID-19 and to die from it. Further, the economic disruption caused by the pandemic has  
25 disproportionately affected people of color, who are more likely to have lost their jobs and less  
26 likely to work in positions allowing them to work from home. Issuing the injunction will strip  
27 income-earning opportunities from people of color and dramatically reduce their access to  
28 rideshare services when they need them the most. This would force many people of color to take

1 other modes of transportation more likely to put them in harm’s way, exposing them to greater  
2 risk of contracting and potentially dying of COVID-19—perhaps the most paradigmatic example  
3 of irreparable harm.

4 The court should decline the State’s invitation to dramatically disturb a core sector of the  
5 State’s economy in these particularly turbulent times, and should deny the motion for  
6 preliminary injunction.

7 **ARGUMENT**

8 **I. THE GIG ECONOMY PROVIDES WORKERS FLEXIBILITY AND A**  
9 **PREFERRED LIFESTYLE**

10 The gig economy is a significant part of the American economy. In 2019, 57 million  
11 Americans—or 35 percent of the U.S. workforce—performed independent freelance work,  
12 contributing nearly one trillion dollars in income to the U.S. economy.<sup>1</sup> For some, freelancing is  
13 their primary source of income; in California, 8.5 percent of workers in 2016 considered  
14 independent contracting work to be their “main job.”<sup>2</sup> For others, freelancing is an attractive  
15 way to earn supplemental income, such as in retirement or while enrolled in school. According  
16 to one study, approximately 80 percent of all ride-share drivers work less than 20 hours per  
17 week, and approximately 70 percent work less than 20 weeks per year.<sup>3</sup>

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24 <sup>2</sup> Annette Bernhardt and Sarah Thomason, *What Do We Know About Gig Work in California? An*  
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25 [http://laborcenter.berkeley.edu/pdf/2017/What-Do-We-Know-About-Gig-Work-in-](http://laborcenter.berkeley.edu/pdf/2017/What-Do-We-Know-About-Gig-Work-in-California.pdf)  
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26 <sup>3</sup> David Lewin, William Hamm, and Mia Kim, *Analysis of Driver Job Losses if Gig Economy*  
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27 Report of the Berkeley Research Group 1 (May 14, 2020), [https://voteyesprop22.com/wp-](https://voteyesprop22.com/wp-content/uploads/2020/05/BRG-REPORT-JOB-LOSS-SUMMARY-MAY-14-2020_FINAL.pdf)  
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1 Freelancing, often referred to as the “gig economy,”<sup>4</sup> includes a variety of highly skilled  
2 services such as computer programming and business consulting, as well as other services like  
3 dog walking and ridesharing, selling goods, and other activities.<sup>5</sup> Freelancing gives workers the  
4 ability to choose when and where to work, and allows them to be their own boss rather than be  
5 supervised. Freelancing also allows people to turn to gig work to deal with financial hardships or  
6 to meet basic needs to pay bills if necessary.<sup>6</sup>

7 Perhaps unsurprisingly, surveys show that freelancers prefer their lifestyle over those  
8 who work in traditional employment situations. 84 percent of freelancers report that they are  
9 living their preferred lifestyle, compared to 54 percent of those working as traditional  
10 employees.<sup>7</sup> Similarly, 75 percent of freelancers say they prefer freelancing over a full-time job  
11 as a traditional employee.<sup>8</sup>

## 12 **II. THE GIG ECONOMY PROVIDES CRITICAL OPPORTUNITIES AND** 13 **SERVICES FOR PEOPLE AND COMMUNITIES OF COLOR**

14 The gig economy provides critical income-earning opportunities for people of color. In  
15 2019, 56 percent of drivers for Lyft identified as being from a minority racial or ethnic group<sup>9</sup>—

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17 <sup>4</sup> Although some people colloquially use “gig economy” as limited to those who use a digital  
18 “platform” like a ridesharing or handyman app to get work, other freelance and independent  
19 workers consider themselves part of the gig economy. *See, e.g.,* Katy Macek, *The Gig Economy*  
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21 <sup>5</sup> *See* Freelancing in America Study, *supra* note 1.

22 <sup>6</sup> Gig Economy Data Hub, *What are the experiences of gig workers?*,  
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23 <sup>7</sup> *See* Milja Milenkovic, *The Future of Employment—30 Telling Gig Economy Statistics*,  
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27 <sup>9</sup> Kori Hale, *Lyft’s Minority Drivers Level Up In \$26 Billion IPO*, FORBES (Apr. 2, 2019)  
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1 and a 2020 Lyft survey found that for Los Angeles and San Francisco, those numbers rise to 79  
2 and 77 percent, respectively.<sup>10</sup> According to one study, almost one-third of Hispanic adults and  
3 27 percent of African American adults earn money through the gig economy.<sup>11</sup> Further, 14  
4 percent Asian Americans and Pacific Islanders in California reported participating in the gig  
5 economy in 2018.<sup>12</sup>

6 Freelance work is also important to caregivers, including caregivers of color, as it allows  
7 flexibility to earn money while accommodating child- or elder-care. According to a 2018 survey  
8 of women who work in the gig economy by three San Francisco companies, more than half of  
9 those with only children under the age of five said they were more likely to do gigs to be able to  
10 increase the amount of time to spend with their children.<sup>13</sup> Gig economy services have also  
11 proved to be a valuable resource empowering older adults, including adults of color, to achieve  
12 personal independence—whether by working beyond retirement age for supplemental income  
13 or by utilizing gig economy services (such as rideshares or delivery services) to address  
14 mobility challenges.<sup>14</sup> Given the benefits associated with freelancing, more than 50 percent of  
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18 <sup>10</sup> Lyft, Economic Impact Report 2020 Los Angeles (2020),  
19 <https://www.lyftimpact.com/stats/cities/los-angeles> (last visited July 28, 2020); Lyft, Economic  
20 Impact Report 2020 San Francisco (2020), <https://www.lyftimpact.com/stats/cities/san-francisco>  
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28 <sup>13</sup> See Fran Maier, Lynn Perkins & Anna Zornosa, *Can't Stop, Won't Stop Her Side Hustle: Women in the Gig Economy 2018* 10 (Sept. 5, 2018), [https://blog.urbansitter.com/wp-](https://blog.urbansitter.com/wp-content/uploads/2018/09/Cant-Stop-Wont-Stop-Her-Side-Hustle_-Women-in-the-Gig-Economy-2018.pdf)  
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30 [2018.pdf](https://blog.urbansitter.com/wp-content/uploads/2018/09/Cant-Stop-Wont-Stop-Her-Side-Hustle_-Women-in-the-Gig-Economy-2018.pdf) (last visited July 28, 2020).

<sup>14</sup> A survey conducted by Lyft in 2020 showed that 24 percent of drivers in California are over  
the age of 50, and that 85 percent of riders living with a disability state that Lyft has increased  
their independence. Lyft, Economic Impact Report 2020 California (2020),  
<https://www.lyftimpact.com/stats/states/california> (last visited July 28, 2020).

1 the U.S. population is projected to participate in the gig economy by 2027.<sup>15</sup>

2 In addition to the income-earning opportunities workers of color enjoy through gig  
3 economy platforms, companies like Lyft and Uber provide critically needed transportation  
4 services to underserved communities—in ways better than that provided by traditional  
5 transportation companies. For example, according to a 2018 academic study, Uber and Lyft  
6 provided transportation services to minority communities in a manner far less discriminatory  
7 than that provided by traditional taxicab companies.<sup>16</sup> The study confirmed that—contrary to  
8 traditional taxicab companies—Lyft and Uber served virtually the entire area of Los Angeles  
9 County, including communities of color, and that Lyft in particular provided more trips per  
10 capita in majority Black neighborhoods than in other neighborhoods.<sup>17</sup> The study also  
11 confirmed that while African American passengers wait as much as 15 minutes longer than  
12 white passengers for taxicab services,<sup>18</sup> African American rideshare passengers waited only two  
13 minutes longer than their non-Black counterparts, a significantly shorter wait time.<sup>19</sup> The study  
14 also found no substantial difference in wait times between white, Asian, and Hispanic riders

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16 <sup>15</sup> Elaine Pofeldt, *Are We Ready For A Workforce That Is 50% Freelance?*, FORBES (Oct. 17,  
17 2017), <https://www.forbes.com/sites/elainepofeldt/2017/10/17/are-we-ready-for-a-workforce-that-is-50-freelance/#27fce5f63f82> (last visited July 28, 2020).

18 The gig economy has not only provided workers of color with opportunities to earn income, it  
19 has provided entrepreneurial opportunities for those historically underrepresented among that  
20 group. For example, in 2017 an African American woman founded Kiddie Commute, a full-  
21 service transportation company for children located in the greater San Diego area; Kiddie  
22 Commute is the only Black woman-owned transportation company in the state. *Introducing the  
23 First Ever Black Woman-Owned Rideshare Service for Kids*, BLACKNEWS.COM (July 29, 2019),  
24 [https://www.blacknews.com/news/kiddie-commute-first-ever-black-woman-owned-rideshare-  
25 service-for-kids/](https://www.blacknews.com/news/kiddie-commute-first-ever-black-woman-owned-rideshare-service-for-kids/) (last visited July 28, 2020).

23 <sup>16</sup> David Z. Morris, *Ride-Hailing Apps May Benefit Poor and Minority Communities The Most,  
24 Study Suggests*, FORTUNE (June 30, 2018), [https://fortune.com/2018/06/30/uber-lyft-poor-  
25 minority-communities/](https://fortune.com/2018/06/30/uber-lyft-poor-minority-communities/) (last visited July 28, 2020).

25 <sup>17</sup> Anne Brown, *Redefining Car Access: Ride-Hail Travel and Use in Los Angeles*, JOURNAL OF  
26 THE AMERICAN PLANNING ASSOCIATION 85:2, 83-95 (2019),  
27 <https://www.tandfonline.com/doi/full/10.1080/01944363.2019.1603761> (last visited July 28,  
28 2020).

<sup>18</sup> Morris, *supra* note 16.

<sup>19</sup> *Id.*

1 using ride-hailing apps. Aside from wait times, African Americans also experienced fewer  
2 cancellations for rides with Lyft and Uber than with traditional taxicab companies operating in  
3 the city.<sup>20</sup> Because minorities (and those of lower income) are less likely to own a car, and make  
4 more rideshare trips per capita than those in middle- and high-income areas, the better quality  
5 transportation services provided by Lyft and Uber are particularly valuable for communities of  
6 color.<sup>21</sup>

7 Rideshare services are also providing critically important transportation options for older  
8 adults. For example, an academic study conducted in San Francisco exploring transportation  
9 barriers for older adults with chronic disease showed that rideshare services enhanced their  
10 ability to attend medical appointments, entertainment options, social visits, and fitness classes,  
11 and to handle errands.<sup>22</sup> The study also showed that using rideshare services was associated  
12 with improved quality of daily life for 90 percent of participants in the study, and that 66  
13 percent of participants reported increased social visits, reducing isolation.<sup>23</sup>

14 **III. THE INJUNCTION WOULD IRREPARABLY HARM WORKERS AND**  
15 **COMMUNITIES OF COLOR, ESPECIALLY DURING THE ONGOING COVID-**  
16 **19 EPIDEMIC**

17 If Lyft and Uber are forced to classify all of the drivers using their platforms as  
18 employees, that will cause a dramatic reduction in the number of drivers permitted to use their  
19 platform. Many of those drivers are people of color. The injunction will not only eliminate  
20 income-earning opportunities for drivers of color, it will also dramatically reduce rideshare  
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22 <sup>20</sup> Marco della Cava, *Blacks face longer wait times on Uber, Lyft than other races – worse for*  
23 *taxis, study says*, USA TODAY (June 27, 2018),  
24 [https://www.usatoday.com/story/tech/2018/06/27/blacks-face-longer-wait-times-uber-lyft-than-](https://www.usatoday.com/story/tech/2018/06/27/blacks-face-longer-wait-times-uber-lyft-than-other-races-and-its-worse-taxis/735578002/)  
[other-races-and-its-worse-taxis/735578002/](https://www.usatoday.com/story/tech/2018/06/27/blacks-face-longer-wait-times-uber-lyft-than-other-races-and-its-worse-taxis/735578002/) (last visited July 28, 2020).

25 <sup>21</sup> *Id.*

26 <sup>22</sup> Leslie Saxon, Rebecca Ebert, and Mona Sobhani, *Health Impacts of Unlimited Access to*  
27 *Networked Transportation in Older Adults*, THE JOURNAL OF MHEALTH (Aug. 13, 2019),  
[https://thejournalofmhealth.com/health-impacts-of-unlimited-access-to-networked-](https://thejournalofmhealth.com/health-impacts-of-unlimited-access-to-networked-transportation-in-older-adults/)  
28 [transportation-in-older-adults/](https://thejournalofmhealth.com/health-impacts-of-unlimited-access-to-networked-transportation-in-older-adults/) (last visited July 28, 2020).

<sup>23</sup> *Id.*

1 services in minority communities historically underserved by traditional transportation  
2 companies—all in the blink of an eye, and during a nearly unprecedented pandemic. This will  
3 cause disproportionate, devastating—and irreparable—harm for people and communities of  
4 color.

5 If the injunction is issued, Uber and Lyft will likely dramatically reduce the number of  
6 drivers permitted to use their platform. One study estimates that requiring ridesharing companies  
7 in California to classify their workers as employees will reduce the number of needed drivers  
8 from more than 1,000,00 to less than 100,000—a reduction of 80-90 percent.<sup>24</sup> This will mean  
9 the immediate elimination of work opportunities for hundreds of thousands of independent  
10 contractor drivers in the state, and dramatically reduce the income-earning opportunities of  
11 drivers who depend on ridesharing platforms.<sup>25</sup> These predictions are not hypothetical: Indeed,  
12 evidence shows that AB5 has already caused gig economy workers to lose income and work  
13 opportunities. Artists, writers, and other contractors have already reported losing contracts, jobs,  
14 and critical income.<sup>26</sup> Further, after AB5 went into effect, the popular web company Vox Media  
15 parted ways with hundreds of freelance journalists rather than hire them as employees.<sup>27</sup> The  
16 injunction will similarly eliminate critically needed income-earning opportunities for drivers of  
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18 <sup>24</sup> Lewin, Hamm, and Kim, *supra* note 3, at 3. The reduction in the number of drivers using the  
19 platform will result from rideshare companies having to schedule drivers for shifts. *See*  
20 Declaration of Brad Rosenthal in Support of Defendant Uber Technologies, Inc.’s Opposition to  
21 Plaintiff’s Motion for Preliminary Injunction, ¶ 50. Scheduling shifts will not only eliminate the  
22 flexibility rideshare drivers prefer, it will also result in the elimination of income-earning  
23 opportunities for the vast majority of drivers using rideshare platforms.

24 <sup>25</sup> *Id.*

25 <sup>26</sup> Sophia Bollag and Dale Kaslerthe, *California workers blame new labor law for lost jobs.*  
26 *Lawmakers are scrambling to fix it*, THE NORTH BAY BUSINESS JOURNAL. (Feb. 10, 2020),  
27 [https://www.northbaybusinessjournal.com/article/article/california-workers-blame-new-labor-  
28 law-for-lost-jobs-lawmakers-are-scrambl/](https://www.northbaybusinessjournal.com/article/article/california-workers-blame-new-labor-law-for-lost-jobs-lawmakers-are-scrambl/) (AB5 “has generated outrage from a wide range of  
Californians, from musicians to therapists to truckers to freelance journalists”; noting challenges  
posed by AB5 to the Sacramento Jazz Cooperative, a nonprofit struggling even before the  
COVID-19 pandemic) (last visited July 28, 2020).

<sup>27</sup> *Id.*; *see also* Suhauna Hussain, *Vox Media cuts hundreds of freelance journalists as AB 5*  
*changes loom*, L.A. TIMES (Dec. 17, 2019), [https://www.latimes.com/business/story/2019-12-  
17/vox-media-cuts-hundreds-freelancers-ab5](https://www.latimes.com/business/story/2019-12-17/vox-media-cuts-hundreds-freelancers-ab5) (last visited July 28, 2020).

1 color—at a moment’s notice—which will wreak untold irreparable economic harm on them and  
2 their households.

3         The irreparable harm stemming from the reclassification would be particularly egregious  
4 given the ongoing COVID-19 pandemic, which has had a disproportionate impact on  
5 communities of color. According to the California Department of Public Health, Latinos, which  
6 comprise 38.9 percent of the state population, are 55.6 percent of the number of confirmed  
7 COVID-19 cases and 45.3 percent of the deaths.<sup>28</sup> African Americans, which comprise 6 percent  
8 of the state’s population, are 8.6 percent of the deaths, despite being only 4.3 percent of those  
9 testing positive for COVID.<sup>29</sup> By contrast, Whites, which are 36.6 percent of the state’s  
10 population, are only 17.6 percent of the cases and 30.4 percent of deaths.<sup>30</sup> As the COVID-19  
11 pandemic rages and case counts continue to climb, communities of color stand to suffer further  
12 devastation caused by the virus.

13         The ongoing economic depression resulting from the COVID-19 epidemic has also hit  
14 minority communities the hardest. A report by the UCLA Latino Policy and Politics Initiative  
15 and the UCLA Center for Neighborhood Knowledge shows that at the height of the COVID-19  
16 crisis, as many as 22 percent of African American and 26 percent of Latinos in California were  
17 jobless, as compared to 17 percent for both white and Asian workers.<sup>31</sup> From mid-March to mid-  
18 May, more than a quarter of California’s Black and Asian workers filed jobless insurance claims,  
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22 <sup>28</sup> California Department of Public Health, *COVID-19 Race and Ethnicity Data* (July 23, 2020),  
23 <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Race-Ethnicity.aspx> (last  
24 visited July 23, 2020).

25 <sup>29</sup> *Id.*

26 <sup>30</sup> *Id.* Asians, which comprise 15.4 percent of the state’s population, have fared somewhat better;  
they are 5.6 percent of cases, and 13 percent of the deaths. *Id.*

27 <sup>31</sup> Eliza Moreno, *State’s Black, Latino workers less likely to be covered by unemployment*  
28 *insurance amid COVID-19*, UCLA NEWSROOM (June 11, 2020),  
<https://newsroom.ucla.edu/releases/california-black-latino-workers-unemployment-insurance>  
(last visited July 28, 2020).

1 as did 21 percent of Latinos.<sup>32</sup> That Latinos are overrepresented among the population of  
2 workers ineligible for unemployment insurance compounds the economic calamity.<sup>33</sup> Another  
3 study showed that Los Angeles County neighborhoods with significant Latino and Asian  
4 American populations are particularly vulnerable to economic uncertainty during the COVID-19  
5 pandemic.<sup>34</sup> That study indicates that almost 60 percent of Latino-majority neighborhoods and  
6 40 percent of Asian-majority neighborhoods will be affected; by contrast, only 12 percent of  
7 white-majority neighborhoods will face the same level of economic disruption stemming from  
8 the crisis.<sup>35</sup> Further, residents in majority Latino neighborhoods were less likely to receive the  
9 stimulus payments under the federal CARES Act,<sup>36</sup> and many Los Angeles African Americans  
10 and Latinos live in neighborhoods with restricted access to open spaces and limited access to  
11 food.<sup>37</sup>

12 Issuing the requested injunction in these precarious times will deprive minority  
13 communities of critically needed income-earning opportunities and transportation options  
14 precisely at the time when they are most needed to reduce exposure to COVID-19. As noted  
15 above, ridesharing companies like Lyft and Uber provide critical transportation services to  
16 people of color—particularly in areas underserved by traditional transportation services; indeed,  
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18 <sup>32</sup> Margot Roosevelt and Taylor Avery, *There's a black jobs crisis. Coronavirus is making it*  
19 *worse*, L.A. TIMES (June 5, 2020), [https://www.latimes.com/business/story/2020-06-05/black-](https://www.latimes.com/business/story/2020-06-05/black-jobs-coronavirus)  
20 [jobs-coronavirus](https://www.latimes.com/business/story/2020-06-05/black-jobs-coronavirus) (last visited July 28, 2020).

21 <sup>33</sup> Moreno, *supra* note 31 (Latinos are 59% of Californians who are ineligible for unemployment  
22 insurance).

23 <sup>34</sup> *Latino, Asian American Areas at High Economic Risk*, UCLA LUSKIN SCHOOL OF PUBLIC  
24 AFFAIRS (April 1, 2020), [https://luskin.ucla.edu/latino-asian-american-neighborhoods-at-high-](https://luskin.ucla.edu/latino-asian-american-neighborhoods-at-high-economic-risk-new-ucla-report-finds)  
25 [economic-risk-new-ucla-report-finds](https://luskin.ucla.edu/latino-asian-american-neighborhoods-at-high-economic-risk-new-ucla-report-finds) (last visited July 28, 2020).

26 <sup>35</sup> *Id.*

27 <sup>36</sup> Eliza Moreno, *Residents in L.A.'s Latino neighborhoods less likely to receive relief funds amid*  
28 *COVID-19*, UCLA NEWSROOM (Apr. 14, 2020), [https://newsroom.ucla.edu/releases/latino-](https://newsroom.ucla.edu/releases/latino-neighborhoods-covid19-relief-funds)  
29 [neighborhoods-covid19-relief-funds](https://newsroom.ucla.edu/releases/latino-neighborhoods-covid19-relief-funds) (last visited July 28, 2020).

30 <sup>37</sup> Eliza Moreno, *For many Blacks and Latinos in L.A., neighborhood conditions make safer-at-*  
31 *home orders harder*, UCLA NEWSROOM (May 20, 2020),  
32 <https://newsroom.ucla.edu/releases/blacks-latinos-los-angeles-neighborhoods-safer-at-home> (last  
33 visited July 28, 2020).

1 Lyft has been designated an essential business operating during the COVID-19 pandemic.<sup>38</sup>  
2 Reclassifying Uber and Lyft drivers as employees, as the government seeks, would reduce  
3 rideshare services which provide safer transportation options minimizing exposure to strangers  
4 potentially carrying the coronavirus. By consequence, the injunction will dramatically reduce  
5 essential rideshare services for people of color, relegating them to modes of public  
6 transportation (such as Metro rail or city buses) where they are more likely to be in close  
7 proximity to a large number of strangers. This is particularly so because workers of color are  
8 more likely to work in occupations in which they are not able to work from home, and so they  
9 need to commute to work.<sup>39</sup> In short, the injunction will put workers of color and their families  
10 at greater risk of serious bodily harm or death from COVID-19—perhaps the most paradigmatic  
11 example of irreparable harm.

12 That the State of California is seeking this injunction in these extremely perilous times is  
13 even more inexplicable given that an initiative on this very issue will be on the ballot this  
14 November.<sup>40</sup> That ballot measure will allow voters to decide whether to preserve the flexibility  
15 and freedom gig economy workers have as independent contractors, while also providing them  
16 with guaranteed minimum earnings, contributions to health care premiums, occupational  
17 accident insurance, automobile accident and liability insurance, and protection against  
18 discrimination and sexual harassment.<sup>41</sup> The measure addresses many of the workplace

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21 <sup>38</sup> See Lyft, *Local service updates*, <https://www.lyft.com/safety/coronavirus/local-updates> (last visited July 28, 2020).

22 <sup>39</sup> Associated Press, *People of color, women shoulder front-line work during pandemic*,  
23 NBCNews (May 4, 2020), <https://www.nbcnews.com/news/nbcblk/people-color-women-shoulder-front-line-work-during-pandemic-n1199291> (last visited July 28, 2020); Sarah  
24 Thomason and Annette Bernhardt, *Front-line Essential Jobs in California: A Profile of Job and  
25 Worker Characteristics*, UC Berkeley Labor Center (May 14, 2020)  
<http://laborcenter.berkeley.edu/front-line-essential-jobs-in-california-a-profile-of-job-and-worker-characteristics/> (last visited July 28, 2020).

26 <sup>40</sup> Yes 22 Save App-Based Jobs & Services, *Protect-App-Based-Drivers-Services-Act Annotated.pdf*, 1-21 (2020), [https://voteyesprop22.com/wp-content/uploads/2020/02/Protect-App-Based-Drivers-Services-Act\\_Annotated.pdf](https://voteyesprop22.com/wp-content/uploads/2020/02/Protect-App-Based-Drivers-Services-Act_Annotated.pdf) (last visited July 28, 2020).

28 <sup>41</sup> *Id.*



1 protections sought by proponents of AB5 and amici in support of the State’s motion. Moreover,  
2 achieving greater benefits for drivers need not be tethered to being classified as employees.  
3 There simply is no need to impose an employee model on drivers accustomed to flexibility in  
4 managing their work hours, simply to provide them with additional benefits. At bottom, the  
5 State’s effort to force Uber and Lyft to reclassify their workers when voters will decide the issue  
6 in just a few months reflects a fundamental disrespect of the democratic process, and should not  
7 be countenanced.

8 **CONCLUSION**

9 Technology companies like Lyft and Uber offer platforms that are critical to the  
10 economic wellbeing of millions of workers of color, and services that are vital to communities of  
11 color. The injunction sought by the State of California would deprive millions of workers of the  
12 flexibility to schedule their work when they prefer and will result in lost income to themselves  
13 and their families, and it will drastically reduce critical transportation services for communities  
14 of color. These effects would be particularly egregious in the midst of the ongoing COVID-19  
15 pandemic, which has disproportionately impacted communities of color. The motion for  
16 preliminary injunction should therefore be denied.

17  
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19 Dated: July 29, 2020

Respectfully submitted,

WILLENKEN LLP



By: \_\_\_\_\_

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Sacramento Chapter Inc., National Asian  
American Coalition, National Black Chamber  
of Commerce, National Diversity Coalition,  
National Hispanic Council on Aging, San  
Gabriel NAACP, and the Southern Christian  
Leadership Counsel of Southern California



**APPENDIX**

The list of the communities-of-color organizations who have joined this brief as *amici curiae* is as follows:

- **California Asian Pacific Chamber of Commerce:** The California Asian Pacific Chamber of Commerce (CalAsian Chamber) was founded in 2010 to give a voice to the over 600,000 Asian Pacific Islander (API) owned businesses in California. Today, the CalAsian Chamber is the largest statewide ethnic chamber in California, with the mission to grow and empower the API business community throughout California.
- **California Hispanic Chambers of Commerce:** Through its statewide network of over 90 Hispanic chambers and trade associations, the California Hispanic Chambers of Commerce (CHCC) represents the interest of the over 815,000 Hispanic businesses in California. As the nation's leading regional Hispanic and ethnic business organization, the CHCC for more than forty years has brought forth the issues and needs impacting Hispanic entrepreneurs and small businesses to the forefront of both California and national economic agendas. The CHCC promotes the economic growth and development of Hispanic entrepreneurs and California's Emerging Businesses.
- **California State National Action Network:** The National Action Network is one of the leading civil rights organizations in the nation founded by the Rev. Al Sharpton. The California State National Action Network has worked diligently in advancing legislation supporting criminal justice reform, amending police use of force practices, ensuring equal voting rights, and school choice for all throughout California.
- **CA-NAACP State Conference:** The NAACP’s principal objective is to ensure the political, educational, social and economic equality of minority citizens of the United States and eliminate race prejudice. The NAACP seeks to remove all barriers of racial discrimination through democratic processes. Today the California State NAACP

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boasts 72 branches and youth units mobilized across the state to help ensure racial justice and equality.

- **Los Angeles Metropolitan Churches:** Los Angeles Metropolitan Churches (LAM) is an association of neighborhood African American churches that formed in the aftermath of the 1992 South Central Los Angeles riots. Our overall vision is to develop faith leaders as organizers. LAM deliberately works with smaller churches because the members are more likely to be in and of the community in which the church is located. The African American church is one of the oldest models of organizing and one of the only ones that has produced lasting change. We are using what works in 2020, by creating greater equality of opportunity in a social and economic context marked by pervasive inequalities for black people; shaping compelling narratives and messages; building the communication capacity of neighborhood churches through cutting edge training and resources; and engaging with policy experts, system leaders, artists, creatives, and culture makers as powerful storytellers to shift the public discourse around the criminal justice system, black workers, health care and gentrification.
- **Los Angeles Urban League:** Los Angeles Urban League serves, educates and empowers African Americans and other minorities to secure economic self-reliance and civil rights by providing targeted social programs and advocating for issues that benefit our communities.
- **National Action Network Sacramento Chapter Inc.:** The National Action Network is one of the leading civil rights organizations in the nation founded by the Rev. Al Sharpton. National Action Network Sacramento Chapter Inc. has worked diligently in advancing legislation supporting criminal justice reform, amending police use of force practices, ensuring equal voting rights, and school choice for all throughout California.
- **National Asian American Coalition:** National Asian American Coalition is a HUD-approved non-profit housing counseling organization and a community diversity

1 financial institution, advocating for homeownership affordability, greater economic  
2 growth focusing on the underserved communities, small business development, and  
3 advancing the growing economic and social power of Asian Americans nationwide.

- 4 • **National Black Chamber of Commerce:** The National Black Chamber of  
5 Commerce® is dedicated to economically empowering and sustaining African  
6 American communities through entrepreneurship and capitalistic activity within the  
7 United States and via interaction with the Black Diaspora.
- 8 • **National Diversity Coalition:** National Diversity Coalition is a 501(c)(3) nonprofit  
9 organization focusing on financial equality and economic development and  
10 advocating for greater opportunity, economic empowerment, and financial equality  
11 for low-income, minority, and other disadvantaged and underserved communities. As  
12 we aggressively seek a brighter economic future for America’s historically  
13 underserved populations, our goal is that through advocacy work and policy changes,  
14 more corporate entities will be held to a greater standard of social responsibility in  
15 helping to reduce income and wealth inequality.
- 16 • **National Hispanic Council on Aging:** The National Hispanic Council on Aging  
17 (NHCOA) is the leading national organization working to improve the lives of  
18 Hispanic older adults, their families and their caregivers. Headquartered in  
19 Washington, DC, NHCOA has been a strong voice dedicated to promoting,  
20 educating, and advocating for research, policy, and practice in the areas of economic  
21 security, health, and housing for more than 30 years.
- 22 • **San Gabriel Valley NAACP:** The mission of the National Association for the  
23 Advancement of Colored People (NAACP) is to ensure the political, educational,  
24 social, and economic equality of rights of all persons and to eliminate race-based  
25 discrimination. The San Gabriel Valley NAACP has a long history of working  
26 together with civic leaders, community members, businesses, and judiciaries to make  
27 our beautiful city more equitable for all.

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- **Southern Christian Leadership Conference of Southern California:** The Southern Christian Leadership Conference is a nonprofit, non-sectarian, inter-faith, advocacy organization that is committed to nonviolent action to achieve social, economic, and political justice. The Southern California chapter supports the organization by working in its community to implement national programs (such as voter registration, improvement of education and direct action against any form of injustice or inequitable treatment) and stand as an advocate for those on the margins of society.