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FEATURE:

Ninth Circuit Withdraws Prior Opinion and Reissues Decision Upholding Seattle Gig-Worker Ordinance Against First Amendment Challenge

UBER TECHNOLOGIES, INC. V. CITY OF SEATTLE, 25-228 (9th Cir. October 29, 2026)

Seattle enacted Ordinance 126878 in 2023, adding Seattle Municipal Code Chapter 8.40, the App-Based Worker Deactivation Rights Ordinance. The Ordinance regulates network companies that connect customers with temporary app-based workers, including delivery workers.

Uber, including subsidiary Portier, and Instacart operate delivery platforms where workers collect and deliver restaurant, retail, and customer orders. The Ordinance excludes some workers, including rideshare drivers.

Seattle enacted the Ordinance to address perceived instability in gig work and workers' vulnerability to arbitrary algorithmic evaluations and deactivations. The City stated that the law promotes public health, safety, and welfare by increasing job stability and setting clear performance expectations. The Ordinance generally prohibits unwarranted worker deactivations. Uber challenged two requirements in § 8.40.050.A.

The first challenged requirement mandates written notice of a company's deactivation policy to affected workers. The second requires that deactivation policies be reasonably related to the company's safe and efficient operations.

Uber sought a temporary restraining order and preliminary injunction shortly before the Ordinance became effective. Instacart intervened, and the parties stipulated to a stay pending appeal. The district court characterized the Ordinance as regulating worker-related conduct, found no likely constitutional violation, and denied preliminary relief.

Enews readers with good memories might remember that I covered this case back in March, when the Appellate Court issued its original opinion. But Uber sought en banc review, which in the 9th Circuit allows a court to withdraw an opinion and issue a new one. In this case, the court's new opinion reached a different conclusion than the first but with the same result in favor of Seattle. In March, the court held that Seattle's ordinance regulates conduct, not speech. Specifically, it regulates the deactivation of workers' accounts, and any impact on the companies' speech is merely incidental to that regulation. It also held that even if the ordinance regulates speech, it regulates commercial speech and survives the applicable First Amendment scrutiny. In this opinion, the court is not deciding whether speech is being regulated. Instead, it assumes, without deciding, that it does, and concludes that the speech is commercial speech subject to the less demanding *Zauderer* standard.

Legal Question(s):

1. Assuming speech was implicated, whether communications describing the terms under which app-based workers may lose access to employment opportunities constitute commercial speech.
2. Whether the written deactivation-policy requirement regulates speech subject to the First Amendment or compels it.

Holding(s):

The Ninth Circuit held that, assuming Seattle's App-Based Worker Deactivation Rights Ordinance regulates speech, it regulates commercial speech and survives the applicable First Amendment scrutiny, is not unconstitutionally vague, and therefore did not warrant a preliminary injunction.

Analysis:

<u>First Challenged Provision: Written Notice of Deactivation Policies</u>

Section 8.40.050.A.1 requires a network company to provide workers written notice defining violations that may lead to deactivation. The policy must be sufficiently specific for workers to understand violations and avoid them. It must be available in English and in a worker's primary language when known or reasonably known. The policy must remain accessible for at least three years after deactivation.

The majority assumed without deciding that the notice requirement regulates speech, but held that any regulated speech was commercial speech. The court applied *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 651 (1985), rather than the commercial-speech restriction test from *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 566 (1980). Under *Zauderer*, courts may uphold compelled commercial disclosures when they are reasonably related to a substantial government interest and involve factual, uncontroversial information about a product or service.

The majority held that protecting worker health and safety was a substantial governmental interest. It concluded that informing workers what conduct could cost them account access and income reasonably furthered Seattle's objectives. The required policy disclosure was factual because it identified a company's actual deactivation rules. The court held the disclosure was noncontroversial because this was not a political controversy, it was merely about informing workers of the type of conduct that could cost them their accounts.

The court held that differing stakeholder views about safety and efficiency did not make the required disclosure controversial. It relied on *Foothills Christian Ministries v. Johnson*, 148 F.4th 1040, 1054

(9th Cir. 2025). The court noted companies could state their disagreement with the Ordinance alongside their compliant policies. It further concluded that the notice obligation was not unduly burdensome because a company could satisfy it through one webpage.

Section 8.40.050.A.2: Safe-and-Efficient-Operations Requirement

Section 8.40.050.A.2 requires that any policy leading to deactivation be reasonably related to the company's safe and efficient operations. It identifies noncompliant policies, including policies based solely on aggregate customer ratings or certain background and driving records.

The majority held that this provision regulates, at most, speech related to unlawful activity because unwarranted deactivations are prohibited by Seattle law. It cited *World Wide Rush, LLC v. City of Los Angeles*, 606 F.3d 676, 684 (9th Cir. 2010), for the principle that protected commercial speech must be non-misleading and unrelated to unlawful activity. The court concluded that plaintiffs could not establish a First Amendment violation even under the more demanding *Central Hudson* intermediate scrutiny framework. It reasoned that the provision necessarily satisfied the rational basis *Zauderer* standard as a result.

Judge Bennett maintained that the majority improperly imported a *Central Hudson* threshold inquiry into a compelled-disclosure case governed by *Zauderer*. He cited *Metro Lights, L.L.C. v. City of Los Angeles*, 551 F.3d 898, 903–04 (9th Cir. 2009), to show that the unlawful-activity inquiry applies to speech restrictions. He reasoned that the Ordinance defines unlawful deactivation by reference to compliance with the challenged policy provisions, making the majority's reasoning circular. According to Judge Bennett, the Ordinance directly regulates the content of companies' policies and prohibits companies from violating their own policies.

Vagueness Challenge

The court rejected plaintiffs' assertion that "reasonably related" fails to provide adequate notice or invites arbitrary enforcement. It applied *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982), which asks whether ordinary persons receive reasonable notice and whether enforcement standards are adequate. The court held that "reasonable" is a familiar legal standard, supplemented by the Ordinance's text and examples. It cited *First Resort, Inc. v. Herrera*, 860 F.3d 1263, 1274 (9th Cir. 2017), explaining that surrounding provisions can cure potential uncertainty in imprecise terms. The court found that the prohibition on deactivation based solely on aggregate customer ratings was clear and did not bar reliance on other information. It also found that exceptions for egregious misconduct and serious driving-related conduct similarly clarified permissible grounds for deactivation.

UBER TECHNOLOGIES, INC. V. CITY OF SEATTLE

SHORT SUMMARIES:

7th Circuit – Licensing – Civil Procedure

Mary Jane Sweet Spot, LLC and its owner, Ashley McCoy, applied in 2021 for a Blue Island business license to operate a small bakery with themed days. When you first read the name *Mary Jane Sweet Spot, LLC*, I know where your mind went. It's a bakery! Surely we can let a small business sell its baked goods without jumping to conclusions based on its name. After initially positive interactions with city officials, the City denied the license after finding that the applicants had

hosted unapproved, paid events involving “infused” treats and entertainment, which the City deemed inconsistent with the intended bakery business. Bamboozled again. The City also cited McCoy’s alleged evasiveness during police contact and her failure to stop advertising for a Halloween event until ordered. After a City hearing officer recommended sustaining the denial, plaintiffs bypassed available City Council review and sought judicial review in Cook County Circuit Court, which predictably dismissed the petition for failure to exhaust administrative remedies and untimely filing, and the Illinois Appellate Court affirmed on exhaustion grounds. Plaintiffs then brought federal due-process, equal-protection, contractual-rights, and state-law business-interference claims arising from the license denial.

The district court dismissed for lack of jurisdiction under Rooker-Feldman, reasoning that the federal claims effectively challenged the state-court proceedings. The Seventh Circuit held that Rooker-Feldman applies only when a plaintiff alleges injury caused by a state-court judgment and seeks its review or rejection. Plaintiffs’ alleged injury arose from the City hearing officer’s determination sustaining the license denial, not from the later state-court dismissal. The state proceedings at most failed to remedy the asserted administrative injury, which does not trigger Rooker-Feldman. The court distinguished jurisdictional Rooker-Feldman issues from possible claim-preclusion defenses following administrative review. Because defendants had not raised claim preclusion, the Seventh Circuit declined to decide it and left that issue for the district court. The court reversed the jurisdictional dismissal and remanded for further proceedings.

Mary Jane Sweet Spot, LLC v City of Blue Island

10th Circuit – First Amendment – Signs

Cozy Inn, a local burger place, and its owner, Stephen Howard, hired an artist to paint a UFO-themed exterior display featuring hamburger-like flying saucers and the phrase, “Don’t Fear the Smell! The Fun is Inside!!” Salina classified the display as a sign because it promoted Cozy Inn’s hamburgers, although it resembled unregulated murals elsewhere in the city. Officials halted the painting because the display exceeded the permitted sign area by approximately eight times. Howard submitted a permit application after city officials instructed him to do so. But Salina then placed the application on indefinite hold while reviewing its sign regulations, triggering a First Amendment lawsuit in the District Court, which granted summary judgment for Cozy Inn.

The Tenth Circuit affirmed summary judgment for Cozy Inn, holding that Salina’s sign code failed intermediate scrutiny without deciding whether the code was content-based. Although traffic safety, aesthetics, and property values were significant interests, Salina had to provide evidence that regulating signs but not murals closely furthered those interests. Salina’s publications, planner testimony, and expert evidence did not show that commercial painted displays posed greater safety, aesthetic, or property-value harms than murals. The court rejected reliance on common sense and similar municipal ordinances because intermediate scrutiny required concrete supporting evidence. The court also held that the indefinite permit hold was an unconstitutional prior restraint. The code required a permit decision within ten days unless the applicant agreed to more time, but the record showed only notice of the hold, not Howard’s consent. Because the application remained unresolved for three years, Salina impermissibly delayed Howard’s speech without a defined time limit.

Cozy Inn, Incorporated v. City of Salina, Kansas

8th Circuit – Property Searches – Land Use

Omaha closed Yale Park Apartments after housing advocates documented tenant complaints and alleged building-code violations, including roof holes, gas leaks, heating failures, exposed wiring, plumbing defects, and moldy circuit breakers. The City obtained and executed an inspection warrant, searched the property, and required tenants to relocate. AB Realty repaired the complex, appealed the violations to the Property Management Appeals Board, reopened Yale Park in spring 2021, and sued the City, officials, and two advocates under § 1983. The district court partially dismissed the action, stayed it during Kay Anderson's, AB's Owner, criminal prosecution, and later dismissed the remaining claims.

AB Realty alleged the warrant affidavit contained several false statements, including that Kay Anderson denied inspection access and that police had been called to the property. The Eighth Circuit held that, even excluding the disputed statements, the affidavit established probable cause through complaints involving 84 of 100 units, roof holes, gas leaks, and Kay's maintenance-related admission. The court rejected AB Realty's reliance on a Nebraska consent-refusal statute because § 1983 remedies federal constitutional violations, not state-law violations. The court also held that AB Realty's procedural due process allegations did not identify each plaintiff's protected interest, each defendant's conduct, or the allegedly deficient process. Its allegations concerning closure, tenant eviction, warning signs, repair delays, contractor communications, and complaint collection were too scattered and conclusory to state a due process claim. Additionally AB Realty failed to plead a per se taking because the City did not physically take the property, which AB Realty continued to own. AB Realty did not adequately allege a regulatory taking under Penn Central, and safety enforcement generally does not constitute a taking. The main takeaway is that the plaintiffs threw a bunch of claims at the wall to see what would stick, and the court had none of it. Great job to the attorneys in Omaha in defending this case, it sounded exhausting.

AB Realty, LLC v. Lane