No. 24-269

In the
Supreme Court of the United States

LYDIA OLSON, *ET AL.*,

Petitioners,

v.

STATE OF CALIFORNIA, *ET AL.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF *AMICI CURIAE*
CALIFORNIA EMPLOYMENT LAW COUNCIL AND CHAMBER OF PROGRESS IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS

Amicus curiae California Employment Law Council (CELC) files this brief in support of Petitioners Uber Technologies, Inc., et al.[1] CELC is a voluntary, non-profit organization that promotes the common interests of employers and the public in fostering the development in California of reasonable, equitable, and progressive rules of employment law. CELC's membership includes roughly 80 private-sector employers in California who collectively employ more than a half-million Californians. CELC has participated as an *amicus* in many of California's leading employment cases[2] and several cases in this Court.[3]

Amicus curiae Chamber of Progress is a tech industry coalition devoted to a progressive society, economy, workforce, and consumer climate. It is an industry organization that backs public policies that

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[1] In accordance with Supreme Court Rule 37.6, *amici* declare that no party or counsel in the pending appeal either authored this brief in whole or in part or made a monetary contribution to fund the preparation or submission of the accompanying brief, and no person or entity made a monetary contribution intended to fund the preparation or submission of the accompanying brief other than *amici* or their members. In accordance with Supreme Court Rule 37.2, amici certify that they notified counsel for all parties of their intent to file this brief at least ten days before filing the brief.

[2] *See, e.g., Donahue v. AMN Servs., LLC*, 11 Cal. 5th 58 (2021); *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021); *Frlekin v. Apple Inc.*, 8 Cal. 5th 1038 (2020); *Troester v. Starbucks Corp.*, 5 Cal. 5th 829 (2018); *Alvarado v. Dart Container Corp. of Cal.*, 4 Cal. 5th 542 (2018).

[3] *See, e.g., Bisonnette v. LePage Bakeries Park St., LLC*, No. 23-51 (U.S. 2023); *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (2022).

will build a fairer, more inclusive country in which all people benefit from technological leaps. Many of Chamber of Progress' corporate partners have interests in promoting innovative, technology-driven labor-market solutions.

Amici have a significant interest in the outcome of this case. In recent years, amici's members have witnessed a significant increase in targeted, animus-based legislation. Some members have even been the targets of that legislation. The lower court's opinion would invite more of the same legislation—perhaps even legislation even more blatantly targeted at specific companies. Amici therefore offer this brief to help the Court understand the wider implications of the lower court's decision.

SUMMARY OF ARGUMENT

It is a principle as old as the Republic: the law must treat like people alike. That rule was once understood as a ban on "class legislation," later as a corollary of due process, and later still as a bulwark against "animus." *See, e.g.*, *United States v. Windsor*, 570 U.S. 744, 770 (2013) (animus); *Buchanan v. Warley*, 245 U.S. 60, 77 (1917) (due process); *Civil Rights Cases*, 109 U.S. 3, 23–24 (1883) (class legislation). But whatever its label, it has always meant that lawmakers may legislate only to promote the common good. They cannot write laws to resolve some private dispute or target some individual person. They must legislate for all people, equally. *See, e.g.*, *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973) (explaining that legislators may not pass laws out of a "bare desire to harm"); *Yick Wo v. Hopkins*, 118 U.S. 356, 369–70 (1886) (legislators cannot pass laws to exercise "purely personal and

arbitrary power"). *See also* William Araiza, Animus: A Short Introduction to Bias in the Law 14–18 (2017) (describing development from "class legislation" to "animus" doctrine) ("[T]he Fourteenth Amendment constitutionalized the rule against class legislation."); Susannah W. Pollvogt, *Unconstitutional Animus*, 81 Fordham L. Rev. 887, 887 (2013) ("It is well established that animus can never constitute a legitimate state interest for purposes of equal protection analysis.").

Venerable as that principle is, it is now under threat. State and local legislators are increasingly weaponizing the legislative process to target individual businesses. And worse, they are making no effort to conceal their intent: they are calling their shots in the public square. *See, e.g.*, *DoorDash, Inc. v. City of New York*, 692 F. Supp. 3d 268, 293 (S.D.N.Y. 2023) (finding that app-based platform companies plausibly alleged that "they were the singular target of regulated price caps"); *DoorDash, Inc. v. City & Cnty. of San Francisco*, No. 21-CV-05502-EMC, 2022 WL 867254, at *2 (N.D. Cal. Mar. 23, 2022) (reciting statements by members of San Francisco Board of Supervisors naming specific companies as targets of commission-cap ordinance); *PayUp Legislation*, City of Seattle[4] [hereinafter PayUp] (naming specific companies as targets of new regulations); *See also* Alina Selyukh, *California Bill Passes, Giving Amazon Warehouse Workers Power to Fight Speed Quotas*,

[4] Available online: https://www.seattle.gov/council/issues/payup (last visited May 18, 2024).

NPR (Sept. 8, 2021)[5] (quoting author of bill) ("We're absolutely targeting the practices of Amazon . . . .").

This case involves one such shot. In 2019, California legislators passed AB 5, a bill to change worker-classification rules. Though the bill facially applied to hundreds of industries, its real target was clear. Legislators, labor unions, and the press all described it as a bill aimed at certain app-based service platforms—in particular, Uber Technologies. *See, e.g.*, Lorena Gonzalez (@LorenaSGonzalez), Twitter (Nov. 21, 2019) [hereinafter Gonzalez Tweet] (tweet from author of AB 5)[6]; Press Release, Serv. Emps. Int'l Union Loc. 721, California Uber and Lyft Drivers Complete Historic Three-Day, 500Mile Caravan for Workers Rights and a Union (Aug. 29, 2019)[7] (stating that AB 5 "would properly classify [Uber] drivers as employees instead of independent contractors"); Kate Conger & Noam Scheiber, *California Labor Bill, Near Passage, Is Blow to Uber and Lyft*, N.Y. Times (Sept. 9, 2019)[8] (reporting that bill's author opposed any amendments "watering down" AB 5 to exempt Uber).

The bill's author, Lorena Gonzalez, did not hide that purpose. Rather, she wore it like a badge of

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[5] Available online: https://www.npr.org/2021/09/08/1034776936/amazon-warehouse-workers-speed-quotas-california-bill.

[6] Available online: https://x.com/lorenasgonzalez/status/1197546573158158336.

[7] Available online: https://www.seiu721.org/press-release/press-release-for-thurs-aug-29-2019-california-uber-and-lyft-drivers-complete-historic-three-day-500-mile-caravan-for-workers-rights-and-a-union.php.

[8] Available online: https://www.nytimes.com/2019/09/09/business/economy/uber-lyft-california.html.

honor. She declared in public that the bill would force Uber to change its business practices. *See* Gonzalez Tweet, *supra*. She also promoted the bill by attacking Uber's business model. As detailed in the pleadings, she lambasted Uber in social media, in the press, and in legislative hearings. *See* 2d Am. Compl., *Olson v. Becerra*, Case No. 2:19-cv-10956, at ¶ 85 (C.D. Cal. Nov. 9, 2020), ECF No. 81 [hereinafter 2d Am. Compl.].[9] She accused the company of exploiting workers, abusing the legal system, and perpetuating "modern slavery." *Id.* ¶¶ 85–93. And she even called on the enforcement officials to sue Uber the day after AB 5 took effect. *Id.* ¶ 56 (citing Gonzalez Tweet, *supra*).

Shocking as these statements were, they carried no weight with the Ninth Circuit. In fact, the Ninth Circuit didn't even mention them. Instead, the court reasoned that California legislators could have reasonably identified Uber as the "pioneer" of app-based misclassification. *Olson v. California (Olson II)*, 104 F.4th 66, 79 (9th Cir. 2024) (en banc). They could also have reasonably decided to strike that problem at its source. *Id.* So they could legitimately burden Uber with an unfavorable legal standard—even as they offered a more lenient standard to essentially identical businesses. *Id.*

That logic turns the no-animus principle on its head. It treats animus not as an illicit motive, but as its own justification. And if allowed to stand, it would mean that legislators can target a business whenever they decide that the business is worth targeting. It

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[9] As this case was resolved on a motion to dismiss, the lower court was required to treat the allegations in the complaint as true. *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 195 (2024).

would reduce a venerable principle to a tautology. *Cf. U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 180 (1980) (Stevens, J., concurring) (explaining that too wooden an application of rational-basis review would reduce judicial review into "a mere tautological recognition of the fact that Congress did what it intended to do").

That result would matter for more than just this case. Already, legislators in California, Seattle, New York, and elsewhere are legislating with the express purpose of harming specific companies. *See, e.g.*, *City of New York*, 692 F. Supp. 3d at 293; *San Francisco*, 2022 WL 867254, at *2; PayUp, *supra*. They have not only admitted that goal, but cited it as a special justification. *See* News Release: Labor Commissioner Cites Amazon Nearly $6 million for Violating California's Warehouse Quotas Law, State of Cal. Dep't of Indus. Rels. (June 18, 2024)[10] (citing as justification for fines against Amazon under California warehouse-quota law that the law was written to target Amazon's practices). And if the Ninth Circuit's decision is allowed to stand, they will have no reason to slow down. They will be able to declare their animus openly and enact it into law.

This Court has corrected similar abuses before. *See, e.g.*, *Windsor*, 570 U.S. at 770; *Romer v. Evans*, 517 U.S. 620, 632–33 (1996); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 449 (1985); *Moreno*, 413 U.S. at 534. *See also Gulf, C. & S.F. Ry. Co. v. Ellis*, 165 U.S. 150, 154–55 (1897) (explaining that "[a] state has no more power to deny to corporations the equal protection of the law than it has to individual citizens" and that "classification

[10] Available online: https://www.dir.ca.gov/DIRNews/2024/2024-46.html.

cannot be made arbitrarily"). It should again here. It should grant the petition for certiorari, reverse the Ninth Circuit's decision, and return the case for further proceedings.

ARGUMENT

1. The Ninth Circuit's opinion invites legislators to target individual companies out of pure spite.

There is no serious question that AB 5 targeted Petitioners. On its face, the law adopted a new, restrictive classification test for workers in multiple industries. *See* A.B. 5, Reg. Sess. (Cal. 2019) [hereinafter AB 5] (codified as amended at Cal. Lab. Code § 2750.3). But its authors made clear from the beginning that it was aimed at app-based rideshare and delivery platforms—especially Uber. As detailed in the complaint, the law's chief author, Lorena Gonzalez, repeatedly attacked Uber in public. *See* 2d. Am. Compl. ¶¶ 85–93. She accused it of using loopholes in existing law to misclassify drivers as independent contractors. *Id.* She described its business model as exploitative and predatory. *Id.* She accused it of "wage theft." *Id.* ¶ 93 And at one point, she even endorsed the idea that it was perpetuating a modern form of slavery. *See id.* (reciting Gonzalez's statements on social media).

That animus toward Uber informed AB 5's design. Though the bill adopted a strict classification test, it carved out multiple industries. *See* AB 5, *supra*, § 2. Those industries could use a more flexible "common law" test, which allowed them to partner with independent contractors more easily. *Id.* (incorporating standard set out in *S. G. Borello & Sons, Inc. v. Dep't of Indus. Rels.*, 769 P.2d 399, 403

(Cal. 1989)). But each of these carveouts was written with Uber in mind—in a bad way. From the beginning, Gonzalez made clear that she was open to the carve outs only if they excluded Uber. *See* 2d. Am. Compl., *supra*, ¶ 85. In other words, she was willing to keep the old test for some companies as long as Uber had to deal with the new one. *See id. See also* Margot Roosevelt, *California Bill Curbing Use of Contractors Would Not Exempt Uber, Lyft, Other Tech Firms*, L.A. Times (Mar. 26, 2019).[11]

Gonzalez also made sure the bill would be enforced against Uber. She included a provision allowing certain public officials to sue companies for misclassification and seek injunctive relief. *See* AB 5, *supra*, § 2 (codified as amended at Cal. Lab. Code § 2786). And she publicly called on those same officials to sue Uber on day one. *See* Gonzalez Tweet, *supra* (calling on "the 4 big city City [sic] Attorneys offices to file for injunctive relief on 1/1/20").

Later, when the legislature moved to amend AB 5 to add more exceptions, Gonzalez agreed. But again, she insisted that the new exceptions exclude Uber. *See* 2d Am. Compl. ¶ 92. And that insistence resulted in the exemptions' unusual structure. The bill expanded an exception for certain "referral" businesses to include new categories, including app-based dog-walking services. *See* A.B. 2257, Reg. Sess., § 2 (Cal. 2020) (codified at Cal. Lab. Code § 2777(b)). But it also expressly excluded rideshare and delivery services. *Id.* § 2777(b)(2)(C) (excluding, among others, "delivery, courier, [and] transportation" services). And only one company in the state regularly

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[11] Available online: https://www.latimes.com/business/la-fi-uber-lyft-employee-contractor-bill-20190326-story.html.

facilitated both delivery and rideshare services—Uber. *Cf. Romer*, 517 U.S. at 633 ("[D]iscriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision." (quoting *Louisville Gas & Elec. Co. v. Coleman*, 277 U.S. 32, 37–38 (1928))).[12]

As a result, no one was confused about AB 5's purpose. Media reports widely described the law as a measure to target Uber. *See, e.g.*, Alejandro Lazo, *California Enacts Law to Classify Some Gig Workers as Employees*, Wall St. J. (Sept. 18, 2019);[13] Eli Rosenberg, *Can California Rein in Tech's Gig Platforms? A Primer on the Bold State Law That Will Try*, Wash. Post (Jan. 14, 2020)[14] (reporting that AB 5 was "[k]nown informally as the gig-economy bill"). And even a California court of appeal, having reviewed the legislative history, concluded that the law had been designed to target a handful of app-based platforms, Uber included. *People v. Uber Techs., Inc.*, 56 Cal. App. 5th 266, 270 Cal. Rptr. 3d 290, 297 n.18 (2020) (agreeing with Uber's counsel that "the Legislature 'targeted' ride-sharing companies, even if its aim was not a rifleshot"). The record practically

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[12] By some counts, AB 5 ultimately exempted more than six hundred professions. *See, e.g.*, FREELANCERS AGAINST AB 5, https://thelibreinitiative.com/wp-content/uploads/2021/04/Freelancers-Against-AB5-List-of-600-Affected-Professions-002.pdf (last visited Sept. 14, 2024) (listing exempted professions).

[13] Available online: https://www.wsj.com/articles/california-enacts-law-to-classify-some-gig-workers-as-employees-11568831719.

[14] Available online: https://www.washingtonpost.com/business/2020/01/14/can-california-reign-techs-gig-platforms-primer-bold-state-law-that-will-try/.

dripped with animus. *See Olson v. California (Olson I)*, 62 F.4th 1206, 1219–20 (9th Cir. 2023) (panel decision) ("Plaintiffs plausibly allege that their exclusion from wide-ranging exemptions, including for comparable app-based gig companies, can be attributed to animus rather than reason.").

And yet, sitting en banc, the Ninth Circuit found no cause for concern. The court reasoned that, on its face, AB 5 affected a variety of industries. *Olson II*, 104 F.4th at 79 –80. Many businesses, not just Uber, had to deal with its strict classification standard. *Id.* Yes, some legislators had criticized Uber's business model. And yes, some amendments had treated other companies more favorably. But in the court's view, legislators could have reasonably concluded that Uber was the "pioneer" of app-based misclassification. *Id.* at 79. And given that conclusion, they could have reasonably chosen to target the problem its perceived source. *See id.* ("It is certainly reasonable for the legislature to try to target the problem of misclassification at its origin.").

That logic was circular. In effect, it meant that as long as legislators thought a business was contributing to a problem, they could single that business out. And as long as the resulting law singled out that business reasonably well, the law would be rationally related to a "legitimate" public purpose—i.e., targeting that business. *See Olson II*, 104 F.4th at 78 (finding that the California legislature acted rationally by 'strik[ing] at the evil where it is felt and reach[ing] the class of cases where it most frequently occurs.'" (quoting *Silver v. Silver*, 280 U.S. 117, 123–

24 (1929))).[15] *Cf. Fritz*, 449 U.S. at 187 (Brennan, J., dissenting) ("It may always be said that Congress intended to do what it in fact did. If that were the extent of our analysis, we would find every statute, no matter how arbitrary or irrational, perfectly tailored to achieve its purpose.").

But that is not the law. As this Court has explained over and over, legislators must legislate for the public good. They cannot intentionally single out individuals or groups for unfavorable treatment. They must act for a legitimate public purpose—not out of pure spite or a "bare desire to harm." *Moreno*, 413 U.S. at 534. *See also Romer*, 517 U.S. at 632 ("[E]ven in the ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained."); *City of Cleburne*, 473 U.S. at 450 (finding that law based solely on "irrational prejudice" failed rational-basis review). *See also* Araiza, *supra*, at 101–10 (explaining that under the Court's precedent, even rational-basis analysis necessarily requires a legitimate public goal—and

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[15] *Silver* is inapposite. It involved a Connecticut law providing that no person carried gratuitously in a car could recover for injuries caused by the car's negligent operation. There was no suggestion that the law targeted any person or group; the challengers argued only that the distinction between paid passengers and those who rode for free was irrational. The opinion said nothing about animus or a desire to harm. *See* 280 U.S. at 123–24 ("In this day of almost universal highway transportation by motorcar, we cannot say that abuses originating in the multiplicity of suits growing out of the gratuitous carriage of passengers in automobiles do not present so conspicuous an example of what the Legislature may regard as an evil, as to justify legislation aimed at it, even though some abuses may not be hit.").

animus is not such a goal) ("What all this suggests is that non-public regarding legislation is unconstitutional.").

Yet that kind of irrational targeting is just what the Ninth Circuit's rationale would allow. It would effectively declare that targeting a "problematic" business is a legitimate public purpose. Animus would no longer be an illicit legislative motive; it would be a legitimate legislative goal. *See Olson II*, 104 F.4th at 79 (reasoning legislators could reasonably target the "pioneer" of app-based misclassification). And that would mean legislators wouldn't even have to hide their animus-based motives. They could, as they did here, announce their antipathy in the public square. *See* 2d Am. Compl., *supra*, ¶ 13 (reciting statements by legislators accusing Uber of "wage theft" and describing Uber's business model as "f—g feudalism, all over again").

2. States and cities are already accepting the Ninth Circuit's invitation.

That risk is not hypothetical. In fact, states and cities are already targeting disfavored businesses. Of course, that kind targeting is hardly new; legislators have long tried to help their friends and punish their enemies. *See, e.g.*, *Gulf, C. & S.F. Ry. Co. v. Ellis*, 165 U.S. 150, 154 (1897) (considering a law requiring certain class of railroad corporations to pay legal fees of injured claimants). What is new about this targeting is its audacity. Increasingly, legislators are not only trying to harm specific companies, but announcing their goals in advance.

Coincidence or no, much of this targeting has germinated in the Ninth Circuit's territory. For example, in 2020, San Francisco adopted a

"commission cap" ordinance targeting a handful of app-based delivery platforms. *See* S.F. Ord. No. 234-20 (Nov. 3, 2020). The ordinance forbade the platforms from charging restaurants more than 15% of an order's purchase price in fees. *Id.* § 1 (codified at S.F. Police Code § 5300). Though it facially applied to all third-party delivery services, its authors made no secret of their real targets. In open hearings, they lamented that the delivery market was dominated by four specific companies—DoorDash, Uber Eats, Postmates, and GrubHub. *See San Francisco*, No. 21-CV-05502-EMC, 2022 WL 867254, at *2 (reviewing statements of members of the board of supervisors). They accused those companies of "exploiting" restaurants and extracting profits from the city's economy—profits they believed should have gone to local businesses. *See* Compl., *DoorDash, Inc. v. City & Cnty. of San Francisco*, No. 21-CV-05502-EMC, at ¶ 27 (N.D. Cal. July 16, 2021), ECF No. 1. So they wrote the ordinance with the express goal of draining those companies' profits. *See id.* ¶ 61 (quoting Supervisor Aaron Peskin) ("The legislation before you today seeks to extend protections that were passed during the pandemic . . . [W]e really have an imperative to protect independent restaurants from the exploitive and predatory practices of third-party food delivery apps that seek to extract wealth from our local economy.").

A similar dynamic played out to the north in Seattle. In 2021, the Seattle City Council announced a package of ordinances subjecting app-based delivery platforms to new regulatory requirements. *See* PayUp, *supra*. The Council identified its targets in press releases and published reports. *Id.* (naming DoorDash, Uber Eats, and Instacart); Memorandum:

Council Bill 120294 – App-Based Worker Minimum Payment Standards, Seattle City Council Central Staff (April 8, 2022)[16] (naming DoorDash, Instacart, and GrubHub). One councilmember, Lisa Herbold, even wrote op-eds attacking the companies by name. She lambasted two of them, Instacart and DoorDash, for publicly opposing the ordinance package. *See* Lisa Herbold, *Instacart Wants to Use You to Deny App-Based Workers Their Rights*, Stranger (Oct. 11, 2023) [hereinafter Instacart Op-Ed];[17] Lisa Herbold, *Open Letter to DoorDash Customers: Support a Minimum Wage*, Stranger (Mary 13, 2022) [hereinafter DoorDash Op-Ed].[18] She accused them of misleading consumers and workers about the ordinances' effects. She also denied that the ordinances would raise prices but, instead, would simply cut into the companies' margins. The companies, she wrote, should not be able to profit on the backs of Seattle residents—and the ordinances would make sure that they didn't. *See* Instacart Op-Ed, *supra* ("The corporations that need to be held accountable, like Instacart, should pay the bill.").

App-based platform companies haven't been the only targets. Also in 2021, California legislators passed a law targeting the alleged practices of a single company—Amazon. *See* A.B. 701, Reg. Sess. (Cal.

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[16] Available online: https://seattle.legistar.com/View.ashx?M=F&ID=10708185&GUID=694EFC45-9ED0-4BBC-9A65-907AE842C3D3.

[17] Available online: https://www.thestranger.com/guest-editorial/2023/10/11/79204890/instacart-wants-to-use-you-to-deny-app-based-workers-their-rights.

[18] Available online: https://www.thestranger.com/slog/2022/05/13/73204725/open-letter-to-doordash-customers-support-a-minimum-wage.

2021) (codified at Cal. Lab. Code §§ 2100–2112). On its face, the law banned certain production quotas throughout the warehouse industry. *See* Cal. Lab. Code § 2102. But as with AB 5, the law's real target was clear. The growth in warehousing had been driven mainly by the success of Amazon, which was rapidly expanding its warehousing capacity. *See* Assembly Floor Analysis: AB 701 Summary (Sept. 3, 2021)[19] [hereinafter Assembly Floor Analysis] (attributing increased demand for warehousing to "giants like Amazon"). Amazon's quota policies had also received coverage in the press, thanks mostly to "reports" published by certain labor organizations. *See* Noam Scheiber, *California Senate Passes Bill Reining In Amazon Labor Model*, N.Y. Times (Sept. 8, 2021)[20] [hereinafter N.Y. Times Report] (citing reports from the Strategic Organizing Center and Teamsters). And some of those same labor organizations appeared as co-sponsors for the bill itself. *See* Senate Rules Committee, Office of Senate Floor Analyses (Sept. 3, 2021)[21] [hereinafter Senate Floor Analysis] (listing three "co-sources": California Teamsters Public Affairs Council, the Los Angeles County Federation of Labor, and the Warehouse Workers Resource Center).

That background alone would have left no little doubt about the law's target. But lawmakers seemed determined to leave no possible ambiguity. Official

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[19] Available online: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB701#.

[20] Available online: https://www.nytimes.com/2021/09/08/business/economy/amazon-labor-california-senate.html.

[21] Available online: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB701#.

legislative analyses referred to Amazon repeatedly, often citing the unions' reports. *See* Assembly Floor Analysis, *supra* (author comments); Senate Floor Analysis, *supra* (author comments) ("Workers at distribution centers of online retail giants like Amazon complain of relentless quotas and crushing workloads and speeds, managed through a system of constant surveillance."). And the law's author—Gonzalez again—told the press that she and her legislative colleagues were "absolutely targeting the practices of Amazon." Alina Selyukh, *California Bill Passes, Giving Amazon Warehouse Workers Power to Fight Speed Quotas*, NPR (Sept. 8, 2021)[22] (quoting Gonzalez). She later described the bill as an attempt to regulate "the Amazon warehouse space." N.Y. Times Report, *supra*. And in her official comments on the bill, she accused Amazon of maintaining "brutal" production quotas. *See* Assembly Floor Analysis, *supra* (author comments) ("[I]ncreased demand for e-commerce giants like Amazon to provide the fastest deliveries at the lowest cost has created a race to the bottom and accelerated the decline in warehouse working conditions.").

Given those comments, it was little surprise when Amazon became one of the first companies prosecuted under the law. In 2024, the California Department of Industrial Affairs accused Amazon of violating the law almost 60,000 times. *See* News Release, Labor Commissioner Cites Amazon Nearly $6 million for Violating California's Warehouse Quotas Law, State

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[22] Available online: https://www.npr.org/2021/09/08/1034776936/amazon-warehouse-workers-speed-quotas-california-bill.

of Cal. Dep't of Indus. Rels. (June 18, 2024).[23] And for those alleged violations, it assessed fines totaling nearly $6 million. *Id.* Though the figures were eye-watering, few observers could claim to be surprised. As the Department itself explained, without irony, Amazon's policies were "exactly the kind of system that the Warehouse Quotas law was put in place to prevent." *See also* Noam Scheiber, *Amazon is Fined Nearly $6 Million Over Warehouse Work Quotas*, N.Y. Times (June 18, 2024)[24] (reporting that the Department's investigation was assisted by the Warehouse Worker Resource Center); Senate Floor Analysis, *supra* (listing the Warehouse Workers Resource Center as a "co-source" of the bill).

This kind of targeting hasn't been limited to the West Coast. On the other side of the country, New York City has been sued for singling out specific companies with its own commission-cap law. *See* N.Y. City Admin. Code §§ 20-563 to 20-563.13. Like San Francisco, New York allegedly targeted a handful of app-based delivery platforms and tried to transfer those platforms' revenues to local restaurants. *City of New York*, 692 F. Supp. 3d at 292–93. And like San Francisco lawmakers, New York councilmembers were explicit about their goals. They "lamented" that the companies were "subsidized by Silicon Valley money." *Id.* at 286. They also complained that "restaurants across the city and across the country are at the mercy of third party food delivery services like Grub Hub [sic] and Uber Eats." *Id.* at 280. And

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[23] Available online: https://www.dir.ca.gov/DIRNews/2024/2024-46.html.

[24] Available online: https://www.nytimes.com/2024/06/18/business/economy/amazon-california-productivity-quota.html.

they vowed to return profits to their preferred constituents. As one councilmember explained, "I will always stand by my small business owners over a billionaire-owned company any given day of the week." *Id.* at 283.

After reviewing those comments, a federal district court blocked the law. The court concluded that the companies had plausibly alleged that "they were the singular target of regulated price caps." *Id.* at 293. And that kind of targeting violated blackletter law. As this Court has often explained, legislators may not write laws out of a "bare desire to harm." *Moreno*, 413 U.S. at 534. *See also Yick Wo v. Hopkins*, 118 U.S. 356, 369–70 (1886) ("When we consider the nature and the theory of our institutions of government . . . we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.").

But even blackletter law can fade with time. Though often repeated and reinforced, the no-animus principle is losing currency. Legislators are targeting disfavored businesses with only the thinnest veil of public-oriented rationales. And if the Ninth Circuit's decision stands, they will be able to dispense even with that charade. They will be able to legislate for no reason but to harm a disfavored business. That is not, and cannot be, the law. *See Windsor*, 570 U.S. at 770 ("The Constitution's guarantee of equality 'must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot' justify disparate treatment of that group." (quoting *Moreno*, 413 U.S. at 534)); Araiza, *supra*, at 7 ("[S]ubjective dislike of a group lies at the core of legislation we can legitimately condemn as based in animus.").

CONCLUSION

Few principles are more fundamental than equal protection of the laws. Today, that principle is embodied in the Fourteenth Amendment. But even before the Amendment's adoption, equal protection ideals were threaded through the law. *See Vanzant v. Waddel*, 10 Tenn. 260, 269 (1829) ("A law which is partial in its operation, intended to affect particular individuals alone, or to deprive them of the benefit of the general laws, is unwarranted by the constitution, and is void . . . ."). Courts have long held that the law must lay its burdens equally on similarly situated people. And while laws must often differentiate between groups, they must do so only to pursue a legitimate public purpose. They cannot differentiate solely to harm:

> While good faith and a knowledge of existing conditions on the part of a legislature are to be presumed, yet to carry that presumption to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminating legislation is to make the protecting clauses of the fourteenth amendment a mere rope of sand, in no manner restraining state action.

Ellis, 165 U.S. at 154. The Ninth Circuit's decision mocks that principle. It invites legislators to pass laws solely to punish individual companies—companies they perceive as the "pioneers" of some problem. *See Olson II*, 104 F.4th at 79. Legislators are unlikely to ignore that invitation; and in fact, some are already accepting it. Throughout the Ninth Circuit's jurisdiction and beyond, states and cities are

passing laws simply to harm companies they dislike. The Ninth Circuit has shown that it is unwilling to stop them. That leaves only this Court.

Respectfully submitted,

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