IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VUGO, INC., et al. Plaintiffs, and MURRAY MEENTS, individually, and on behalf of all others similarly situated, Plaintiff-Intervenor, v. CITY OF CHICAGO, Defendant.	))))))))))))))))	Case No. 17-cv-864 Hon. Elaine E. Bucklo

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

Introduction

On a motion for preliminary injunction concerning an alleged violation of First Amendment rights, the issue before the Court is whether the Plaintiffs have a likelihood of success on the merits of their claim. In this case, a Chicago ordinance prohibits commercial advertising – but not noncommercial speech – on the exterior or interior of ridesharing vehicles, but does not prohibit commercial advertising on the exterior or interior of taxis or personal vehicles. The Court should find that Plaintiffs have a likelihood of success on the merits of their First Amendment claim challenging the ordinance – and therefore are entitled to a preliminary injunction – for the following reasons.

First, the ordinance is a content-based restriction on speech in violation of the First Amendment because it treats noncommercial advertising more favorably than commercial advertising in ridesharing vehicles and is not narrowly tailored to serve a compelling government interest.

Second, the ordinance is a content-based restriction on speech in violation of the First Amendment because it discriminates against certain speakers by prohibiting commercial advertising in ridesharing vehicles, but not taxis and personal vehicles, and is not narrowly tailored to serve a compelling government interest.

Third, the ordinance is unconstitutional even under lesser First Amendment scrutiny because its ban on commercial advertising in ridesharing vehicles, but not taxis and personal vehicles, is not narrowly tailored to serve a substantial governmental interest.

Fourth, the ordinance also violates the Equal Protection Clause because its discrimination against people seeking to advertise in rideshare vehicles is not narrowly tailored to serve a substantial governmental interest.

Statement of Facts

A. The City of Chicago bans commercial advertising on or in rideshare vehicles, but not taxis or personal vehicles.

In May 2014, the City of Chicago passed an ordinance regulating ridesharing service providers such as Uber and Lyft (which it calls "transportation network providers"), the people who drive for those services ("transportation network drivers"), and the vehicles they use to transport passengers ("transportation network vehicles"). Chi. Ordinance No. O2014-1367 (the "Ordinance"). (Am. Compl. ¶ 25.)

The Ordinance prohibits the display of all "[c]ommercial advertisements . . . on the exterior or in the interior of a transportation network vehicle." Chi. Mun. Code 9-115-130. (Am. Compl. ¶ 26.) Anyone who violates that advertising ban is subject to a fine from $500.00 to $1,000.00 for each violation. Chi. Mun. Code 9-115-230. (Am. Compl. ¶ 28.) In contrast, the Code elsewhere allows taxicab licensees, unlike ridesharing drivers, to display advertisements on or inside their vehicles with a permit. (Am. Compl. ¶ 29.) And numerous taxicab vehicles do, in fact, display advertising signs or devices on their exterior, interior, or both. (*Id.* ¶ 30.) Further, the City does not prohibit advertising on and inside ordinary passenger vehicles that are not used as taxicabs or for ridesharing. (*Id.* ¶ 31.) Nor does it prohibit signs or video displays generally on or inside ordinary passenger vehicles.

B. The City's advertising ban prohibits Vugo from offering its advertising platform in Chicago.

Plaintiff Vugo, Inc. is a technology company that operates a software-only mobile media network that allows ridesharing drivers to display advertising and other media (such as news and entertainment) to their passengers on tablet devices in their vehicles. (*Id.* ¶¶ 16-17) (Bellefeuille Decl. ¶ 3, attached as Ex. A.) Vugo partners directly with rideshare drivers – who individually decide whether to use Vugo's service – to display media, including advertisements, to their

passengers on tablet devices, and it shares its advertising revenue with the drivers. (Am. Compl. ¶ 18-19.) (Bellefeuille Decl. ¶ 4.)

To use Vugo, a driver installs the Vugo software application on his or her personal Android or Apple tablet device and mounts the device to the headrest of his or her vehicle's front seat, facing the rear passenger seats, so passengers can see the ads. (Am. Compl. ¶ 20) (Bellefeuille Decl. ¶ 6.) Vugo's software seeks to show rideshare passengers media and ads they are likely to find relevant by using an algorithm that selects media and ads for any given trip based on trip signals and other data, including city, state, route, pick-up point for the trip, business category, specific keywords, and the passenger's destination. (Am. Compl. ¶ 22) (Bellefeuille Decl. ¶ 7.) Vugo's platform shows ads only when a rideshare driver has a passenger. Passengers can interact with ads and other content that interest them by tapping on the tablet screen. (Am. Compl. ¶ 23) (Bellefeuille Decl. ¶ 8.) Advertisers pay Vugo for the ads that are displayed, and Vugo pays rideshare drivers a percentage of that revenue. (Am. Compl. ¶ 24) (Bellefeuille Decl. ¶ 9.)

Because of the City's ban on commercial advertisements on or inside ridesharing vehicles, Vugo cannot operate its platform in Chicago and cannot contract with Chicago rideshare drivers who want to use Vugo's advertising platform. (Am. Compl. ¶¶ 33-34) (Bellefeuille Decl. ¶ 10.) The prohibition also makes it virtually impossible for Vugo to contract with Chicago businesses to display advertisements on the Vugo platform because such advertisements could not be displayed in rideshare vehicles in Chicago, the city in which local Chicago businesses typically would most want to advertise. (Am. Compl. ¶ 35) (Bellefeuille Decl. ¶ 12.)

If Vugo were to contract with rideshare drivers to display its advertising platform in rideshare vehicles in Chicago, it could be subject to fines from $500 to $1,000 for each violation. Chi. Mun. Code 9-115-230. (Am. Compl. ¶ 36.)

C. The City's advertising ban injures the Plaintiff rideshare drivers.

The City's advertising ban injures the Plaintiff rideshare drivers by prohibiting them from displaying ads through Vugo and otherwise. Plaintiffs Donald Deans, Denise Jones, and Glouster Brooks drive for Uber, Lyft, or both in Chicago. (*Id*. ¶¶ 11-13) (Deans Decl. ¶ 1, attached as Ex. B) (Jones Decl. ¶ 1, attached as Ex. C) (Brooks Decl. ¶ 1, attached as Ex. D.) All three wish to place commercial ads in their rideshare vehicles, including ads provided by Vugo, but are prevented from doing so because of the City's advertising ban on or inside ridesharing vehicles. (Am. Compl. ¶¶ 38-39) (Deans Decl. ¶¶ 2-3) (Jones Decl. ¶¶ 2-3) (Brooks Decl. ¶¶ 2-3.)

Plaintiff Patricia Page also drives for Uber in Chicago but primarily works as an artist, providing face painting services at events and paints murals and other art work for a fee. (Am. Compl. ¶ 14) (Page Decl. ¶¶ 1-2, attached as Ex. E.) Ms. Page previously advertised her painting services on the side and rear of her vehicle, but she removed this advertising after the City issued her a ticket for violating the ordinance's advertising ban. (Am. Compl. ¶ 14, 40) (Page Decl. ¶¶ 3-4.) Ms. Page wishes to restore the advertisements of her painting services to the exterior of her vehicle as she continues to drive for Uber in Chicago, but the City's prohibition on commercial advertisements prevents her from doing so. (Am. Compl. ¶ 40-41) (Page Decl. ¶¶ 5-8.)

If any of the driver Plaintiffs were to display commercial advertising in or on their rideshare vehicles in Chicago – as all of them wish to do and would do, but for the City's advertising ban – they could be subject to fines from $500 to $1,000 for each violation. Chi. Mun. Code 9-115-230. (Am. Compl. ¶ 42.)

Legal Standard

In general, to prevail on a motion for preliminary injunction, Plaintiffs must show: (1) a likelihood of success on the merits; (2) the lack of an adequate remedy at law; and (3) irreparable

harm if the Court does not grant the injunction. The Court will then (4) balance the hardship the moving party will suffer in the absence of relief to any hardship the nonmoving parties will suffer if the injunction is granted and (5) consider the interests of nonparties. *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001).

When a party seeks a preliminary injunction on the basis of a First Amendment violation, however, factors two through five are generally presumed to be met because the loss of First Amendment freedoms constitutes irreparable injury for which money damages are not adequate, a municipality cannot suffer harm when it is prevented from enforcing an unconstitutional statute, and protecting First Amendment freedoms is always in the public interest. *Christian Legal Society v. Walker,* 453 F.3d 853, 859 (7th Cir. 2006); *see also Joelner v. Village of Washington Park, Illinois*, 378 F.3d 613, 620 (7th Cir. 2004).

Therefore, Plaintiffs' entitlement to a preliminary injunction in this case turns on their likelihood of success on the merits of their constitutional claims. To establish a likelihood of success on the merits, the Plaintiffs need only demonstrate a better than negligible probability of prevailing on the merits of just one claim upon which the request for injunctive relief is based. *Brunswick Corp. v. Jones*, 784 F.2d 271, 275 (7th Cir. 1986).

Argument

I. Plaintiffs are likely to succeed on the merits of their constitutional claims.

Plaintiffs are likely to succeed on the merits of their claims because the Ordinance's ban on commercial advertising on or in rideshare vehicles unreasonably discriminates against certain individuals' speech in violation of their rights to Free Speech and Equal Protection.

A. The Ordinance violates the First Amendment.

1. The commercial advertising ban is an unconstitutional content-based restriction on speech.

A restriction on speech is content based if it applies to particular speech because of the topic discussed or the idea or message expressed. *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015); *see also Norton v. City of Springfield*, 806 F.3d 411, 412 (7th Cir. 2015) (explaining that, after *Reed*, "[a]ny law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification"). A law "defining regulated speech by its function or purpose" is content based. *Reed*, 135 S. Ct. at 2227. The Court applies strict scrutiny content-based restrictions on speech, "'which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Reed*, 135 S.Ct. at 2231 (citation omitted).

a. The Ordinance is content-based because it bans commercial speech, but not noncommercial speech, in rideshare vehicles.

The Ordinance's ban on commercial advertisements, but not noncommercial speech, is content based: speech is either allowed or prohibited based entirely on its topic, idea, or message – or, in other words, by the "function or purpose" of the speech. *See Reed*, 135 S. Ct. at 2227. If the function of an advertisement's speech is to propose a commercial transaction, it is banned; but its purpose or function of speech is anything else, it is allowed. By the clear test that the Supreme Court put forth in *Reed*, distinctions between commercial and noncommercial speech are content-based. *Cf. Sorrell v. IMS Health Inc.*, 564 U.S. 552, 564 (2011) ("[M]arketing [is] speech with a particular content.")

As the Court in *Reed* acknowledged, laws banning political signs but not commercial signs impose a content-based restriction on speech. *Reed*, 135 S. Ct. at 2232 (citing *Matthews v.*

Needham, 764 F. 2d 58, 59-60 (1st Cir. 1985)). Of course it logically follows from this that a ban on commercial speech, but not noncommercial speech, is likewise content based.

The application of *Reed* in this Circuit confirms that restrictions distinguishing between commercial and noncommercial speech are content-based. In *Norton v. City of Springfield*, the Court applied strict scrutiny to conclude that an anti-panhandling ordinance, which prohibited panhandling in the "downtown historic district" of Springfield, Illinois, but allowed signs and oral requests for money, was content-based and therefore violated the First Amendment. 806 F.3d 411, 412 (7th Cir. 2015). The Court stated that, under *Reed*, "*[a]ny law* distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification." *Id*. (emphasis added).

The Seventh Circuit also recently rejected a plaintiff's argument that an exception for political speech should be carved from Indiana's anti-robocall statute, because, as the Court stated, such an "exception if created, would be real content discrimination, and *Reed* then would prohibit the state from forbidding robocall *advertising* and other non-political speech." *Patriotic Veterans, Inc. v. Zoeller*, 845 F.3d 303, 305 (7th Cir. 2017) (emphasis added). In other words, the Seventh Circuit concluded that *Reed* would prohibit the state from discriminating against commercial speech in favor of certain noncommercial speech – which is precisely what the Ordinance does in this case.

b. The commercial advertising ban is content-based because it applies to rideshare vehicles but not taxis or personal vehicles.

The Ordinance's commercial advertising ban is also a content-based restriction on speech for the additional reason that it prohibits commercial advertising by some speakers – rideshare drivers – but not others – taxi drivers and drivers of personal vehicles.

"Laws designed or intended to suppress or restrict the expression of specific speakers contradict basic First Amendment principles." *United States v. Playboy Entm't Grp.*, 529 U.S. 803, 812 (2000). "Restrictions that favor or disfavor certain speech based on the speaker rather than the content of the message are still content based." *Surita v. Hyde*, 665 F.3d 860, 870 (7th Cir. 2011). As the Court recognized in *Reed*, restrictions on speech based on the identity of the speaker are all too often simply a means to control content. 135 S. Ct. at 2230. Laws favoring some speakers over others are therefore subject to strict scrutiny when the legislature's speaker preference reflects a content preference. *Id*. "Thus," for example, "a law limiting the content of newspapers, but only newspapers, could not evade strict scrutiny simply because it could be characterized as speaker based." *Id*.

Here, the Ordinance displays a preference by the City to favor the speech of taxis over the speech of rideshare drivers, giving taxis an advantage over their rideshare competitors. The Ordinance is therefore subject to strict scrutiny.

c. The Ordinance is subject to strict scrutiny, which it cannot survive.

Because the Ordinance's advertising ban imposes a content-based restriction on speech, it is subject to strict scrutiny. Under strict scrutiny, the City must show that its prohibition on commercial advertising, but not noncommercial speech, in rideshare vehicles, but not taxis or personal vehicles, is necessary to serve a compelling government interest and is narrowly drawn to achieve that end. *See Reed*, 135 S.Ct. at 2231.

The City's stated interests in aesthetics and traffic safety (Memo. Mot. Dismiss 6) are not compelling government interests. *See Cent. Radio Co. v. City of Norfolk*, 811 F.3d 625, 633 (4th Cir. 2016); *Whitton v. City of Gladstone*, 54 F.3d 1400, 1408 (8th Cir. 1995); *Neighborhood Enters. v. City of St. Louis*, 644 F.3d 728, 737-38 (8th Cir. 2011); *Solantic, LLC v. City of*

Neptune Beach, 410 F.3d 1250, 1267 (11th Cir. 2005); *Foti v. City of Menlo Park*, 146 F.3d 629, 637 (9th Cir. 1998). Therefore, the Plaintiffs have a likelihood of success on the merits.

2. In the alternative, the commercial advertising ban fails lesser First Amendment scrutiny because it is not narrowly tailored to serve a substantial governmental interest.

In the alternative, the Ordinance's commercial advertising ban also fails under the heightened scrutiny that courts have applied to restrictions on commercial speech under *Central Hudson Gas & Electric. Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980). In evaluating challenges to restrictions on commercial speech under the *Central Hudson* test, courts consider whether: (1) the commercial speech concerns a lawful activity and is not false or misleading; (2) the asserted governmental interest is substantial; (3) the regulation directly advances the governmental interest asserted; and (4) the restriction is no more extensive than necessary to serve that interest. *Id*. at 566. The fourth prong requires "a means narrowly tailored to achieve the desired objective." *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989). The government bears the burden of affirmatively establishing that the Ordinance's restriction on commercial advertising in rideshare vehicles are justified by the final three prongs. *Id*.

Here, the City's advertising ban fails the *Central Hudson* test.

The first factor cannot reasonably be disputed: there is no reason to believe that Plaintiffs' proposed commercial speech is unlawful, false, or misleading. Further, there is no reason to believe that commercial advertisements in or on rideshare vehicles generally would be false, misleading, or concern unlawful activities, or would be more likely to be false or misleading than commercial advertisements in or on taxis or personal vehicles.

As to the second *Central Hudson* factor, the City has cited three interests that the commercial advertising ban supposedly serves: aesthetics, traffic safety, and passenger comfort.

(Memo. Mot. Dismiss 6.) Plaintiffs concede for purposes of this argument that the City's first two purported interests, traffic safety and aesthetics, are substantial. But no court has ever found that a government has a substantial governmental interest in passenger comfort. To support this purported justification, the City relies on *Members of City Council v. Taxpayers for Vincent,* 466 U.S. 789, 805 (1984) – but in that case, the government's asserted interest was aesthetics, not passenger comfort. And although that case acknowledged that the government might have an interest in restricting certain *methods* of expression that "may legitimately be deemed a public nuisance" – such as "loud and raucous sound trucks" – it did not condone discrimination against particular messages based on their content. *See id.* (*citing Kovacs v. Cooper*, 336 U.S. 77 (1949)). Here, the Ordinance's advertising ban does not regulate a method of expression (such as communication through the signs or tablet screens on which commercial advertisements might be displayed), nor does it address any public nuisance; it just regulates the expression of certain speech based on its content. Indeed, the City's "passenger comfort" justification really amounts to an argument that the City may "protect" passengers from speech they might not like. But the City has no legitimate interest – much less a substantial one – in protecting people from hearing certain messages based on their content. *See Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 71-72 (1983) (the fact that protected speech may be offensive to some does not justify its suppression); *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 765 (1976) (dissemination of commercial advertising, "however tasteless and excessive it sometimes may seem," is a matter of public interest).

Further, in any event, the Ordinance cannot survive the third and fourth factors of *Central Hudson*. The commercial advertising ban does not directly advance the City's putative interests in traffic safety, aesthetics, and passenger comfort, nor is it narrowly tailored to do so.

It is the City's burden to prove that the ban on commercial ads on or in rideshare vehicles directly advances its interest in traffic safety in a narrowly tailored manner. *See Fox*, 492 U.S. at 480. The City cannot satisfy this burden with "mere speculation or conjecture" but rather "must demonstrate," with evidence, "that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Edenfield v. Fane*, 507 U.S. 761, 770 (1993).

Commercial advertising on the interior of a vehicle is generally not visible to pedestrians and other drivers. So the City must provide evidence that such advertising would actually threaten traffic safety. Moreover, it is the City's burden to prove with evidence that commercial advertisements on the inside and outside of rideshare vehicles would affect traffic safety *more than other things* visible to drivers that the City has not banned, including other kinds of speech. For example, the City would have to explain how billboards, commercial advertisements on trucks – including mobile billboard trucks, which the City allows – signs on buildings, and people holding signs on the sidewalk threaten traffic safety to a lesser degree than commercial advertisements on the outside of rideshare vehicles. The City's tolerance of many forms of outdoor advertising that are much more visible – and therefore, presumably, much more potentially distracting – than ads on the exterior or interior of rideshare vehicle, demonstrates that the Ordinance is not narrowly tailored to address traffic safety. *See City of Ladue v. Gilleo*, 512 U.S. 43, 52 (1994) (exemptions from restrictions on speech can "diminish the credibility of the government's rationale for restricting speech in the first place" and demonstrate that restrictions are not narrowly tailored to serve a sufficiently important governmental interest); *see also Vanguard Outdoor, LLC v. City of Los Angeles*, 648 F.3d 737, 742 (9th Cir. 2011) (restriction on speech can be underinclusive, and therefore invalid, when exceptions undermine and counteract the interest the government claims the restriction furthers).

The commercial advertising ban also does not directly advance an interest in aesthetics. The City has an interest in the aesthetic appearance of the city itself, not in the appearance of the inside of every private rideshare vehicle – or any private property that happens to be involved in a commercial transaction.

Indeed, the commercial advertising ban does not advance aesthetics at all. Aesthetics is about *how something looks*, but the Ordinance regulates *what something says*. The Ordinance prohibits an advertisement that says "Eat at Joe's" but allows an advertisement that says "Vote for Joe," even if the two signs are identical in every aesthetic respect. The Ordinance does not regulate advertisements' size, number, or physical structure – the qualities of signs governments typically may regulate (subject to First Amendment limitations) to serve an aesthetic interest. *Cf. Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 510 (1981).

As for the City's purported interest in "passenger comfort," again this is not a substantial interest and not even a legitimate one where, as here, the government invokes it to prevent people from seeing or hearing certain speech based on its content. Moreover, putting that fatal flaw aside, the City has presented no evidence that commercial advertisements would make many, most, or all passengers less comfortable.[1]

The City claims that its ban on commercial advertisements in rideshare vehicles is justified because rideshare customers are supposedly a "captive audience." But the cases that the City cites for this proposition (Memo. Mot. Dismiss 7-8) all involved speech on government property, not in private vehicles. *See Lehman v. Shaker Heights*, 418 U.S. 298, 304 (1974) (finding that

[1] The City also ignores the fact that services like Uber and Lyft, already contain a mechanism to address passenger comfort by providing rideshare customers the ability to rate their rideshare drivers, and that these services use these ratings to improve customer experience, including by suspending rideshare drivers with low scores. This, of course, means that if rideshare customers are generally uncomfortable with commercial advertisements, rideshare drivers have an incentive to limit or remove them.

buses were not a First Amendment forum, and thus upholding a restriction on political advertising on city buses); *Anderson v. Milwaukee Cnty*., 433 F.3d 975, 980 (7th Cir. 2006) (also involving public buses); *Frisby v. Schultz*, 487 U.S. 474, 484-85 (1988) (involving speech on government property); *Hill v. Colorado*, 530 U.S. 703, 718 (2000) (same). The government's interest in maintaining *public* property for the enjoyment of everyone is not present in this case, where the government is restricting speech in *private* vehicles. Customers of rideshare vehicles are not a "captive audience." They do not have to ride in a particular rideshare vehicle or use a particular rideshare service. Further, Vugo currently allows customers to mute the application if customers are not interested. (Bellefeuille Decl. ¶ 8.)

And even if the City's interests in aesthetics and "passenger comfort" were legitimate and were advanced by the Ordinance – which they are not – the Ordinance would not advance these interests in a narrowly tailored manner. The City only bans commercial advertisements, but not other potentially discomforting speech in or on rideshare vehicles. For example, the Ordinance would prevent a rideshare driver from posting an advertisement for the popular musical *Hamilton*, which presumably would cause few people discomfort, but would allow a rideshare driver to display a sign advocating the construction of a wall on the nation's Southern border, which might cause many people discomfort.[2] Here again, the Ordinance is so underinclusive as to render the City's purported justification incredible.

The Supreme Court held that an ordinance that similarly discriminated against commercial speech was not narrowly tailored to serve an aesthetic interest in *Cincinnati v. Discovery Network*, 507 U.S. 410 (1993). In that case, Cincinnati prohibited publications that were principally commercial from using newsracks on public property but permitted newspapers to be

[2] As mentioned above, because of Uber and Lyft's rating systems, rideshare drivers generally have a market incentive to not engage in speech that would make customers offended or uncomfortable.

sold at such newsracks. The Court struck the law down, finding that the ordinance's distinction between commercial and noncommercial speech bore no relationship to the particular interests that the city asserted. Although the city might have a legitimate interest in aesthetics, newsracks with commercial publications would be "no greater an eyesore than the newsracks [with newspapers] permitted to remain on Cincinnati's sidewalks." *Id*. at 424. The same is true here. The distinction between commercial ads (prohibited) and noncommercial speech (not prohibited) in rideshare vehicles bears no relationship to the interests asserted by the City. The City "has not asserted an interest in preventing commercial harms by [prohibiting commercial ads in rideshare vehicles], which is, of course, the typical reason why commercial speech can be subject to greater governmental regulation than noncommercial speech." *Id*. at 426.

Because the City's prohibition on commercial advertisements in rideshare vehicles does not advance the City's interests in traffic safety, aesthetics, or passenger comfort in a narrowly tailored manner, the Plaintiffs have a likelihood of success on the merits.

B. The Ordinance violates the Equal Protection Clause.

Because the Ordinance restricts some speech more than other speech, the Court may analyze it not only under the First Amendment but also under the Equal Protection Clause of the Fourteenth Amendment. *See Police Dep't of Chi. v. Mosley*, 408 U.S. 92, 94-95 (1972). The Ordinance does this in two ways: (1) it only bans commercial advertising, not others kinds of speech; and (2) it only bans commercial advertising on or in rideshare vehicles, not on any other vehicles. Under the Equal Protection Clause, when differential treatment involves expressive conduct that is protected by the First Amendment, the differential treatment of speech must be narrowly tailored to serve a substantial government interest. *Id*. at 101. Since this analysis is substantially the same as the *Central Hudson* analysis, the Ordinance violates the Equal

Protection Clause for the same reasons, discussed above, that it violates the First Amendment. Thus, Plaintiffs have shown a likelihood of success on the merits of their Equal Protection claim.

II. The remaining preliminary injunction factors are presumed in Plaintiffs' favor.

The remaining preliminary injunction standards favor an injunction because, again, when a party seeks a preliminary injunction on the basis of a First Amendment violation, they are generally presumed to be met. *Christian Legal Society,* 453 F.3d at 859. Plaintiffs lack an adequate remedy at law and are irreparably harmed by the restrictions they challenge because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The balancing of hardships overwhelmingly favors an injunction because a municipality cannot suffer harm when it is prevented from enforcing an unconstitutional statute. *Christian Legal Society,* 453 F.3d at 859. Plaintiffs, in contrast, would suffer great harm without an injunction: Vugo would be completely prevented from operating in Chicago; Patricia Page would be completely prevented from advertising her face-painting business on her car; the other driver Plaintiffs would be prevented from displaying commercial ads, through Vugo and otherwise, on or in their rideshare vehicles. Finally, the public interest favors granting the injunction because "it is always in the public interest to protect First Amendment liberties." *Joelner*, 378 F.3d at 620.

Conclusion

For all the reasons stated herein, the Court should grant a preliminary injunction allowing Plaintiffs to display commercial ads in and on rideshare vehicles during the pendency of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeffrey M. Schwab, an attorney, certify that on June 14, 2017, I served Plaintiffs' Memorandum in Support of Their Motion for Preliminary Injunction on all counsel of record by filing it through the Court's electronic case filing system.

/s/ Jeffrey M. Schwab