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

ILLINOIS TRANSPORTATION TRADE ASSOCIATION, et al.,	)	
	)	No. 14-CV-00827
Plaintiffs,	)	
	)	Judge Sharon Johnson Coleman
CITY OF CHICAGO,	)	
	)	Magistrate Judge Sidney Schenkier
Defendant,	)	
	)	

PROSPECTIVE INTERVENOR-DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO INTERVENE AS DEFENDANTS

Prospective Intervenors Dan Burgess, Ted Liu, and Dustin Morby, drivers who use the electronic dispatch services of ridesharing companies uberX, Sidecar, and Lyft ("the Intervenors"), by and through their undersigned counsel, pursuant to Federal Rule of Civil Procedure 24, state the following in support of their Motion to Intervene as Defendants:

INTRODUCTION

The Intervenors stand to lose their liberty and their livelihoods if this Court demands that the City of Chicago arrest them and put them out of business. Therefore, the Intervenors have the most direct and important stake in the outcome of this lawsuit and seek leave to intervene as defendants either as a matter of right pursuant to Federal Rule of Civil Procedure 24(a) or, in the alternative, permissively pursuant to Federal Rule of Civil Procedure 24(b). Because the Intervenors have filed a timely motion and will demonstrate that their interests would not be adequately protected by Defendant, the City of Chicago ("the City"), this Court should grant the Intervenors leave to intervene as defendants under Rule 24(a). In the alternative, this Court should permit the Intervenors to intervene under Rule 24(b).

STATEMENT OF FACTS

Prospective intervenors Dan Burgess, Ted Liu, and Dustin Morby are drivers for innovative new ridesharing services like uberX, Sidecar, and Lyft. The Amended Complaint in this action asks this Court to order the City to arrest or otherwise punish ridesharing drivers, and the Intervenors therefore seek to intervene to defend themselves against the threat of such punishment. *See* Pls.' Am. Comp. ¶¶ 109; 116; 125; 138; 145; 150.

This action originated on February 6, 2014, when a group of taxicab associations, medallion owners, lenders, and operators (collectively, "Plaintiffs") sued the City demanding (1) that the City enforce its taxicab regulations against drivers who use the electronic dispatch services of ridesharing companies Uber, Sidecar, and Lyft; and (2) damages for the diminution in the value of taxicab medallions resulting from competition with persons such as the Intervenors. Am. Comp. ¶¶ 104-151. Plaintiffs allege that the City's choice not to punish ridesharing drivers constitutes (1) an unconstitutional taking without just compensation under the United States Constitution, *id*. ¶¶ 109-114; (2) a federal equal protection violation, *id*. ¶¶ 115-122; and (3) a violation of Plaintiffs' federal substantive due process rights, *id*. ¶¶ 123-131. Plaintiffs also bring three pendent state law claims for (4) breach of contract, *id*. ¶¶ 132-144; (5) promissory estoppel, *id*. ¶¶ 145-151; and (6) equitable estoppel, *id*. ¶¶ 152-156. Plaintiffs amended their Complaint on February 26, 2014 to remove a plaintiff. *Illinois Transp. Trade Assoc. v. City of Chicago*, 14-cv-827, CM/ECF Docket No. 17. The City has yet to respond.

UberX (Uber's ridesharing division), Sidecar, and Lyft offer an innovative service, called "ridesharing," in which passengers may use an application ("app") on their smartphone to request a ride from a driver. Dec. of Dan Burgess in Supp. of Mot. to Intervene

¶¶ 18-25 ("Burgess Dec.") (attached as Ex. 1); Dec. of Ted Liu in Supp. of Mot. to Intervene ¶¶ 16-20 ("Liu Dec.") (attached as Ex. 2); Dec. of Dustin Morby in Supp. of Mot. to Intervene ¶¶ 15-19 ("Morby Dec.") (attached as Ex. 3). Ridesharing drivers come from a variety of backgrounds. Some drive only part-time for fun or to supplement their income from another job, while others drive full-time to make a living. Burgess Dec. ¶ 10; Liu Dec. ¶ 11; Morby Dec. ¶ 10. When a passenger requests a ride using their app, nearby drivers are notified through an app on their phones. Burgess Dec. ¶ 20; Liu Dec. ¶ 18; Morby Dec. ¶ 17. The driver can decide whether or not to accept the passenger. Burgess Dec. ¶ 21; Liu Dec. ¶ 19; Morby Dec. ¶ 18. If the driver accepts the passenger, the passenger is notified that the driver is on his way and can track his location through the app. Burgess Dec. ¶¶ 22; Liu Dec. ¶¶ 20; Morby Dec. ¶¶ 19. The passenger pays for the ride via the app, instead of paying the driver in the car. The driver later receives 80 percent or more of the passenger's fare deposited directly into his bank account by uberX, Sidecar, or Lyft. Burgess Dec. ¶¶ 24-27; Liu Dec. ¶¶ 22-23; Morby Dec. ¶¶ 21-22. Ridesharing services benefit consumers by providing competitive prices, comfortable and safe rides, and friendly drivers. Burgess Dec. ¶ 17; Liu Dec. ¶ 15; Morby Dec. ¶ 14.

Recognizing the benefits that innovative transportation services offer consumers and entrepreneurs, Plaintiffs allege that the City has largely not enforced its taxicab regulations against ridesharing drivers since the companies launched in Chicago. Am. Comp. ¶¶ 6-8. Instead, the City has been working to pass an ordinance legalizing and regulating ridesharing companies like uberX, Sidecar, and Lyft independently of taxicabs. *See* City of Chicago, Proposed Ordinance, Ch. 9-115.[1] Plaintiffs' lawsuit threatens the livelihood and liberty of all Chicago ridesharing drivers, including the Intervenors. Plaintiffs ask this Court to compel the

[1] *Available at* http://www.cityofchicago.org/content/dam/city/depts/bacp/Rules%20and%20Regulations/proposedmcc9115transportationtetworkprovider.pdf.

City to enforce its taxicab regulations against the Intervenors and, as a result, to arrest them for driving people around Chicago.

Dan Burgess drives for uberX, Sidecar, and Lyft. Burgess Dec. ¶ 6. Ted Liu and Dustin Morby drive for uberX and Lyft. Liu Dec. ¶ 7; Morby Dec. ¶ 6. Mr. Burgess and Mr. Liu drive part time and do not rely primarily on their driving businesses to earn a living. Burgess Dec. ¶¶ 6-7, 9; Liu Dec. ¶¶ 7-8, 10. Mr. Morby does rely primarily on ridesharing to earn a living. Morby Dec. ¶¶ 5-7, 9. Mr. Burgess, Mr. Liu, and Mr. Morby cannot afford to purchase taxicab medallions or to comply with Chicago's taxicab regulations.[2] Burgess Dec. ¶ 37; Liu Dec. ¶ 32; Morby Dec. ¶ 31. Moreover, Mr. Burgess, Mr. Liu, and Mr. Morby do not operate (and do not want to operate) medallion taxis. Burgess Dec. ¶ 33; Liu Dec. ¶ 29; Morby Dec. ¶ 28. If the City demands that Mr. Burgess, Mr. Liu, and Mr. Morby purchase taxicab medallions or abide by the City's taxicab regulations, they will be forced to stop driving for uberX, Sidecar, and Lyft. Burgess Dec. ¶ 38; Liu Dec. ¶ 33; Morby Dec. ¶ 32. Mr. Burgess, Mr. Liu, and Mr. Morby wish to drive for the ridesharing companies indefinitely into the future. Burgess Dec. ¶ 28; Liu Dec. ¶ 24; Morby Dec. ¶ 23.

ARGUMENT

Dan Burgess, Ted Liu, and Dustin Morby, in order to protect their interests in continuing to drive for uberX, Sidecar, and Lyft and not to be cited or arrested by the City, seek leave to intervene as defendants in this action. An order by this Court directing the City to arrest or otherwise prosecute the Intervenors will obviously greatly impair and impede the Intervenors' most basic liberty interests. Therefore, this Court should grant the Intervenors leave to intervene

[2] Individuals, or individuals who own 100% of a corporation, can purchase taxicab medallions in Chicago. *See* Chicago Municipal Code 9-112-100(a)(2).

as a matter of right pursuant to Rule 24(a) or, in the alternative, permissively pursuant to Rule 24(b).

I. THIS COURT SHOULD GRANT THE INTERVENORS LEAVE TO INTERVENE IN THIS ACTION AS A MATTER OF RIGHT PURSUANT TO RULE 24(a).

In relevant part, Rule 24 of the Federal Rules of Civil Procedure provides:

> (a) Intervention of Right. On timely motion, the court must permit anyone to intervene who . . . (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Rule 24(a) is construed liberally, with all doubts resolved in favor of intervention. *Michigan v. U.S. Army Corps of Engineers*, No. 10-4457, 2010 U.S. Dist. LEXIS 85821, at *7 (N.D. Ill. Aug. 20, 2010, Dow, Jr., J.) (attached as Ex. 4) ("[A] court should not deny a motion to intervene unless it is certain that the proposed intervenor cannot succeed in its case under any set of facts which could be proved under the complaint.") (internal citations omitted); *see also Lake Investors Dev. Grp., Inc. v. Egidi Dev. Grp.*, 715 F.2d 1256, 1258 (7th Cir. 1983). In the Seventh Circuit, intervention as a matter of right requires prospective intervenors to show that: (1) their motion was timely; (2) they have an interest relating to the property or transaction at stake in the action; (3) the "disposition of the action may as a practical matter impair or impede [their] ability to protect that interest"; and (4) existing parties do not adequately represent the intervenors' interest. *Michigan*, 2010 U.S. Dist. LEXIS, at *6; *accord Wade v. Goldschmidt*, 673 F.2d 182, 185 (7th Cir. 1982). This Court should grant this Motion to Intervene because the Intervenors satisfy the requirements of Rule 24(a) as set forth below.[3]

[3] The Seventh Circuit has recently held that intervention requires merely something more than Article III standing. *See, e.g., City of Chicago v. Fed. Emergency Mgmt. Agency*, 660 F.3d 980, 984-85 (7th Cir. 2011) ("Limiting principles such as remoteness must be added atop the requirement of Article III standing to place essential limits on the scope of intervention as a matter of right"); *Bond v. Utreras*, 585 F.3d

A. The Intervenors' Motion is Timely.

The Intervenors' motion to intervene is timely. In determining timeliness, courts in the Seventh Circuit consider four factors: (1) the length of time the intervenor knew or should have known of his interest in the case; (2) any prejudice caused to the original parties by the delay; (3) any prejudice the intervenor would suffer if his motion is denied; and (4) any unusual circumstances. *South v. Rowe*, 759 F.2d 610, 612 (7th Cir. 1985); *Michigan*, 2010 U.S. Dist. LEXIS, at *7-8. Here, only a complaint has been filed. No discovery has been taken or motions heard, and the City has yet to respond to the complaint. *See Miami Tribe of Okla. v. Walden*, 206 F.R.D. 238, 241 (S.D. Ill. 2001) (finding the intervenor's motion timely because it was filed shortly after the commencement of the lawsuit and before the defendants had answered the complaint). The Intervenors submit with this motion their Motion to Dismiss for Failure to State a Claim as their required proposed pleading pursuant to Rule 24(c) and wish to have the Motion to Dismiss heard quickly. (Attached as Exs. 6 (Motion to Dismiss) and 7 (Memorandum in Support.) Because the Intervenors filed this Motion to Intervene shortly after the commencement of the lawsuit and do not plan to (or want to) delay the proceedings, Plaintiffs could not possibly claim prejudice as to the timing of this Motion. The Intervenors, on the other hand, stand to lose their liberty and their businesses if this Court does not allow them to intervene in this lawsuit. The factor of timeliness weighs heavily in favor of intervention.

1061, 1069-70 (7th Cir. 2009). Intervenors satisfy this standard because the threat of enforcement of a law is a cognizable injury for the purpose of Article III standing. *Cf. Ezell v. City of Chicago*, 651 F.3d 684, 695-96 (7th Cir. 2011) (pre-enforcement challenges to city ordinances satisfy Article III standing). Moreover, the injury with which the Intervenors are threatened is the opposite of "remote[ ]"—instead, the Intervenors' injury is exactly the remedy sought by the Amended Complaint.

B. The Intervenors Possess an Interest in the Litigation Which May Be Impaired or Impeded as a Result of This Litigation.

The Intervenors plainly have an interest in this litigation because they want to continue driving for ridesharing companies for the indefinite future. Burgess Dec. ¶ 28; Liu Dec. ¶ 24; Morby Dec. ¶ 23. Plaintiffs' lawsuit threatens to shut down the Intervenors' businesses, Burgess Dec. ¶ 38; Liu Dec. ¶ 33; Morby Dec. ¶ 32, and subject them to arrest, fines, or other punishment. *See* Am. Comp. ¶¶ 114, 122, 131, 144, 151, 156 (requesting injunctive relief forcing the City to enforce taxicab regulations against ridesharing drivers). These consequences would "impair or impede" the Intervenors' interests in continuing to make a living by driving for ridesharing companies, as well as their more basic interest in avoiding punishment.

These core liberty interests, which are directly threatened by Plaintiffs' request for relief in this case, are more than sufficient to meet the Seventh Circuit's requirement that intervenors as of right have a direct, non-remote interest in the litigation. *See City of Chicago v. Fed. Emergency Mgmt. Agency*, 660 F.3d 980, 984-85 (7th Cir. 2011). It is impossible for Plaintiffs to achieve the result they seek *without* injuring the Intervenors—and therefore, a judgment dismissing the Amended Complaint with prejudice would confer immediate benefits (both financial benefits and benefits in the form of peace of mind) on the Intervenors. *See id.* at 985 ("Cases allow intervention as a matter of right when an original party does not advance a ground that if upheld by the court would confer a tangible benefit on an intervenor who wants to litigate that ground.") (citing *Kleissler v. U.S. Forest Service*, 157 F.3d 964, 969–70, 973–74 (3d Cir. 1998) (permitting timber companies to intervene in action to bar logging in a national forest because the timber companies defending the right to log might have been tempted to agree to a settlement that excluded the would-be intervenors from competing with them for future logging contracts)); *accord Freedom From Religion Found., Inc. v. Koskinen*, No. 12-0818, 2014 U.S.

Dist. LEXIS 12783, at *5 (W.D. Wis. Feb. 3, 2014) (attached as Ex. 5) (permitting church and its vicar to intervene in lawsuit by nonprofit against Internal Revenue Service alleging that IRS's policy of not enforcing prohibition on electioneering by nonprofits against churches and religious organizations violates federal Establishment Clause and Equal Protection Clause, so that church and vicar could "protect . . . [their] argument" regarding the Establishment Clause).

Because they have interests that would be impaired or impeded as a result of this lawsuit, the Intervenors have standing to intervene and seek to dismiss Plaintiffs' claims.

C. The Intervenors' Interests Will Not Be Adequately Protected by the Parties.

Intervention is also warranted because the Intervenors have good reason to believe their interests will not be adequately protected by the parties. Intervention under Rule 24(a) is warranted on the grounds of inadequate representation by existing parties "if the applicant shows that representation of his interest 'may be' inadequate." *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972). Ordinarily, "the burden of making that showing should be treated as minimal." *Id.* The burden was satisfied in *Trbovich*, for example, by a prospective intervenor who preferred a different litigation strategy than what was being employed by the Secretary of Labor. *Id.* at 538-39. Here, where the City has not yet decided exactly what its policy regarding ridesharing services is,[4] there is little question that the Intervenors' interests are distinct from the City's.

Inadequacy of representation is particularly likely in cases like this one, where individual litigants seek to intervene on the same side as a government entity. *See, e.g., Nat'l Farm Lines v.*

[4] Since ridesharing services launched, the City has been working to devise a regulatory framework that is less restrictive than the taxicab regulations. On February 5, 2014, Mayor Rahm Emmanuel proposed an ordinance that would legalize and regulate ridesharing. *See* City of Chicago, Proposed Ordinance, Ch. 9-115, *available at* http://www.cityofchicago.org/content/dam/city/depts/bacp/Rules%20and%20Regulations/proposedmcc9115transportationtetworkprovider.pdf. The ordinance has not yet passed.

I.C.C., 564 F.2d 381, 384 (10th Cir. 1977) ("We have here also the familiar situation in which the governmental agency is seeking to protect not only the interest of the public but also the private interest of the petitioners [who sought to protect regulations that financially benefitted them] in intervention, a task which is on its face impossible."). This is because their interests usually differ in size and scope: The government's interest is subject to a wide range of competing demands, including budgetary concerns and sometimes-conflicting public-policy concerns, while an individual's interest in a lawsuit is necessarily much narrower. Courts routinely recognize this principle. *See, e.g.*, *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1190 (9th Cir. 1998) ("[B]ecause the employment interests of IBT's members [in law guaranteeing them a prevailing wage] were potentially more narrow and parochial than the interests of the public at large, IBT demonstrated that the representation of its interests by the named defendants-appellees may have been inadequate"); *Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996) (permitting intervention by Farm Bureau in case where the USDA was a defendant because, *inter alia*, the Bureau's members were beneficiaries of a government aquifer and had distinct economic concerns that the government did not share); *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 17 (D.D.C. 2010) (permitting intervention of coal company in federal land-lease program and stating that "governmental entities generally cannot represent the 'more narrow and parochial financial interest' of a private party"); *Michigan*, 2010 U.S. Dist. LEXIS, at *20-21 ("It is well-settled that regulatory agencies generally do not adequately represent the 'narrow, parochial interests' of regulated entities, because agencies are charged with broad duties to the public.").

Moreover, the Seventh Circuit has acknowledged that the prospective intervenor "should be treated as the best judge of whether the existing parties adequately represent his or her

interests, and any doubt regarding adequacy should be resolved in favor of the proposed intervenors." *Id.* at *19 (quoting *Miami Tribe of Okla.*, 206 F.R.D. at 243). In this case, the Intervenors believe that their interests will not be adequately represented by the City. Burgess Dec. ¶ 39; Liu Dec. ¶ 34; Morby Dec. ¶ 33. And this belief is eminently reasonable: The City faces a wide variety of political and budgetary pressures that could very easily lead it to pursue a litigation strategy that is at odds with the Intervenors' interests or even to settle this litigation outright. *See Builders Ass'n of Greater Chicago v. City of Chicago*, 170 F.R.D. 435, 441 (N.D. Ill. 1996, Moran, J.) (noting that a difference in prospective intervenors' and City of Chicago's interests "could manifest itself later in the litigation should the City decide to accept a settlement that would financially harm applicants' members"). While (at the moment) neither the City nor the Intervenors seem to want to see the Intervenors punished, the different interests of the parties create the possibility of sharp disagreement over their litigation approach.

A recent case illustrates this situation well. In *Michigan v. U.S. Army Corps of Engineers*, 2010 U.S. Dist. LEXIS, the City of Chicago, a group of trade associations, and a sightseeing company sought to intervene as defendants in a lawsuit by several states against the U.S. Army Corps of Engineers and the Metropolitan Water Reclamation District of Greater Chicago. The states sought an injunction enjoining the defendants to take measures to prevent the migration of Asian carp through the Chicago Area Waterway System ("CAWS") into Lake Michigan. *Id.* at *3. The intervenors were parties that would be harmed by disruption of the CAWS—the City of Chicago, which had an interest in ensuring that the CAWS could continue to be operated in a manner that protected the public health and safety; the trade associations, whose members could "lose significant business, if not cease operations entirely;" and the

sightseeing company, which would be forced to shut down its water taxi business if the locks on the CAWS were closed. *Id.* at *15.

The court allowed all of the parties to intervene. It reasoned that the original defendants' "broad duty" as regulators to minimize the migration of Asian carp into Lake Michigan was different from the group of trade associations' interest in "protect[ing] the economic viability of its members" and the sightseeing company's interest in the "financial viability of its business." *Id.* at *22. Similarly, here, the City's broad interest in its own discretion and general concern for the public safety and public fisc is different from the Intervenors' basic interest in their own businesses and continued freedom. A potential difference in incentives and approach was enough to justify intervention in *Army Corps of Engineers*, and it is enough here. *See id.* ("Defendants *may well face* a potential conflict of interest were they to try to represent both the general interest of the public and the financial interests of the [intervenors]" (emphasis added)).

II. IN THE ALTERNATIVE, THIS COURT SHOULD PERMIT THE INTERVENORS LEAVE TO INTERVENE IN THIS ACTION PURSUANT TO RULE 24(b).

Applicants alternatively seek permissive intervention pursuant to Rule 24(b). Permissive intervention is appropriate where (1) the motion is timely; (2) the prospective intervenor's claim or defense has a question of law or fact in common with the main action; and (3) intervention will not unduly delay or prejudice the original parties. *Builders Ass'n of Greater Chicago*, 170 F.R.D. at 441. A trial court allows permissive intervention at its discretion. *See City of Chicago v. Fed. Emergency Mgmt. Agency*, 660 F.3d at 987. As explained below, the Intervenors' proposed intervention easily satisfies Rule 24(b)'s standards because it is timely, will concern the same legal and factual issues as those raised by Plaintiffs, and will not unduly delay or prejudice the rights of the original parties.

First, as noted above, the Intervenors' motion is timely. The Intervenors seek intervention at the earliest stage possible in these proceedings, shortly after the complaint has been filed and when little else has occurred.

Second, since the Intervenors are the parties against whom Plaintiffs wish the City to enforce its taxicab regulations, the Intervenors' defense will share questions of law and fact in common with Plaintiffs' action against the City. The Intervenors wish to defend against all of Plaintiffs' claims against the City and will have the assistance of a public-interest law firm known for its expertise in litigating cases involving transportation regulation across the country. The Intervenors believe that they can be of great assistance to this Court in framing and understanding the issues at stake in this case.

Third, as discussed above, the Intervenors' intervention will not unduly delay or prejudice the rights of the original parties. Granting the Intervenors' motion to intervene will not delay resolution of this lawsuit, which the Intervenors wish to have dismissed as quickly as possible.

CONCLUSION

The Intervenors stand to lose their businesses and their freedom if Plaintiffs' lawsuit is successful. The City cannot adequately represent the Intervenors' personal interests, and that is why they have made this timely motion to intervene as defendants in this lawsuit. For the foregoing reasons, the Intervenors respectfully request that this Court enter an order (1) granting their Motion to Intervene and (2) granting the Intervenors any further relief this Court deems just and necessary.

Dated: March 25, 2014

Respectfully submitted,

/s/ Anthony B. Sanders

Anthony B. Sanders (No. 6284335)
INSTITUTE FOR JUSTICE
527 Marquette Avenue, Suite 1600
Minneapolis, Minnesota 55402
Tel.: (612) 435-3451
Fax: (612) 435-5875
Email: asanders@ij.org

Renee D. Flaherty (D.C. Bar No. 1011453)
INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, Virginia 22203
Tel.: (703) 682-9320
Fax: (703) 682-9321
Email: rflaherty@ij.org

Attorneys for Prospective Intervenor-Defendants

James W. Joseph (No. 6225267)
EIMER STAHL LLP
224 South Michigan Avenue, Suite 1100
Chicago, Illinois 60604
Tel.: (312) 660-7612
Fax: (312) 692-1718
Email: jjoseph@eimerstahl.com

Local Counsel for Prospective Intervenor-Defendants