26-2079-cv

United States Court of Appeals

for the

Second Circuit

UBER TECHNOLOGIES, INC., UBER USA, LLC,

Plaintiffs-Appellees,

– v. –

CITY OF NEW YORK,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR *AMICUS CURIAE* THE MANHATTAN INSTITUTE IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* states that it has no parent corporation and that no publicly held corporation owns any part of it.

TABLE OF CONTENTS

RULE 26.1 CORPORATE DISCLOSURE STATEMENT i
TABLE OF AUTHORITIES iii
STATEMENT OF INTEREST 1
SUMMARY OF THE ARGUMENT 2
ARGUMENT 8
I. LOCAL LAW 52 IS UNLIKE EVERY SECTOR-SPECIFIC LAW CITED BY THE CITY'S AMICI 8
A. Background employment laws do not impair employment contracts because employment contracts are presumed to be terminable at will 9
B. Local Law 52 alone rewrites a core term of a fixed, written contract—and reaches back seven years 12
C. The other laws the amici cite preserve rights under existing contracts 15
II. THE DECISION BELOW LEAVES GOVERNMENTS WITH AMPLE ROOM TO REGULATE 17
A. The district court did not condemn sector-specific regulation 17
B. Governments still have every regulatory tool they had before the opinion 21
III. LOCAL LAW 52 WILL HARM WORKERS AS A CLASS 22
A. Limits on discharge harm workers as a class 23
B. Local Law 52 elevates narrow interests over the interests of society at large 28
CONCLUSION 29
CERTIFICATE OF COMPLIANCE 31

TABLE OF AUTHORITIES

Cases

2 Tudor City Place Assocs. v. 2 Tudor City Tenants Corp., 924 F.2d 1247 (2d Cir. 1991) 10

Allied Structural Steel Co. v. Spannaus, 438 U.S. 234 (1978) 2–3, 7, 18–20

Baron v. Port Auth. of N.Y. & N.J., 271 F.3d 81 (2d Cir. 2001) 5–6, 11–12, 15

Buffalo Tchrs. Fed'n v. Tobe, 464 F.3d 362 (2d Cir. 2006) 22

DoorDash, Inc. v. City of New York, 692 F. Supp. 3d 268 (S.D.N.Y. 2023) 11

Energy Rsrvs. Grp., Inc. v. Kan. Power & Light Co., 459 U.S. 400 (1983) 20, 29

Gebhardt v. Time Warner Ent.-Advance/Newhouse, 284 A.D.2d 978 (4th Dep't 2001) 10

Hanlon v. Macfadden Publ'ns, 302 N.Y. 502 (1951) 5, 10, 13, 15

Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934) 5, 20

Kronick v. L.P. Thebault Co., 70 A.D.3d 648 (2d Dep't 2010) 10

Melendez v. City of New York, 16 F.4th 992 (2d Cir. 2021) 3, 18, 28

Murphy v. Am. Home Prods. Corp., 58 N.Y.2d 293 (1983) 9

Real Est. Bd. of N.Y., Inc. v. City of New York, 182 F.4th 140 (2d Cir. 2026) 18, 20–21

Sabetay v. Sterling Drug, Inc., 69 N.Y.2d 329 (1987) 9–10

Sveen v. Melin, 584 U.S. 811 (2018) 2

United Healthcare Ins. Co. v. Davis, 602 F.3d 618 (5th Cir. 2010) 11

Constitutional Provisions, Statutes, and Local Laws

U.S. Const. art. I, § 10, cl. 1 2

N.Y. Lab. Law §§ 240–241 9

N.Y. Lab. Law § 653 ..... 5, 9

N.Y. Lab. Law §§ 691–692 9
N.Y. Lab. Law §§ 780, 789 ..... 5, 9, 16
N.Y. Lab. Law § 860-a 9
N.Y. Lab. Law § 1039 16
N.Y. Pub. Health Law § 2832 16
N.Y.C. Admin. Code §§ 20-1201, 20-1271 9
N.Y.C. Admin. Code § 20-1601 9
N.Y.C. Admin. Code § 20-1616 16
N.Y.C. Admin. Code § 22-505 9
N.Y.C. Local Law 52 of 2026 ..... *passim*
N.Y.C. Local Law 140 of 2016 ..... 6, 15
S. 5026, 2023–2024 Reg. Sess. (N.Y. 2023) 6, 15
24 V.I.C. § 76 16
Mont. Code Ann. § 39-2-912 16

Other Authorities

David H. Autor, John J. Donohue III & Stewart J. Schwab, *The Costs of Wrongful-Discharge Laws*, 88 Rev. Econ. & Stat. 211 (2006) 25, 27–28

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Cong. Rsch. Serv., IN10506, *Declining Dynamism in the U.S. Labor Market* (June 15, 2016) 23–24

Steven Davis & John Haltiwanger, *Labor Market Fluidity and Economic Performance*, NBER Working Paper No. 20479 (2014) 24

James E. Ely Jr., *The Contract Clause: A Constitutional History* (2016) 2

Edward P. Lazear, *Job Security Provisions and Employment*, 105 Q.J. Econ. 699 (1990) 24–27

Joaquín Naval & José I. Silva, *Quantitative Effects of Employment Protection in OECD Labor Markets*, 94 Manchester Sch. 398 (2026) 27

OECD Employment Outlook (2004) 26

STATEMENT OF INTEREST[1]

The Manhattan Institute for Policy Research ("MI") is a nonpartisan public-policy research foundation dedicated to advancing ideas that foster economic choice and individual responsibility. Its scholars have long examined constitutional structure, labor-market regulation, and the effects of employment law.

This case concerns MI because it involves a classic example of regulatory overreach. Under New York City's Local Law 52 of 2026, a high-volume for-hire vehicle company may, in most cases, deactivate a driver's account only for "just cause." Just cause is determined not by the company itself, but by a third-party decisionmaker. That limitation overrides the drivers' and companies' existing contracts, under which a company may decide whether to deactivate a driver's account in its sole discretion. Local Law 52 eliminates that discretion on purpose: it deliberately rebalances the contractual arrangement to favor a small set of drivers. That kind of intervention upsets markets, frustrates private ordering, and ultimately harms everyone involved.

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[1] All parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part, and no party or party's counsel contributed money intended to fund its preparation or submission.

MI submits this brief to elaborate on those harms. It urges the Court to affirm the decision below and find that Local Law 52 likely violates the Contract Clause of the U.S. Constitution.

SUMMARY OF THE ARGUMENT

Under the Contract Clause, no state may "pass any . . . law impairing the Obligation of Contracts." U.S. Const. art. I, § 10, cl. 1. The Clause's core purpose is to stop the government from rewriting private agreements. The Founders understood that private agreements are the backbone of a well-functioning economy; they allow people to coordinate their activities, allocate resources, and invest with confidence. Private agreements also enhance personal liberty, enabling people to order their economic lives as they see fit. Those virtues would be undermined if the government could override private agreements at will. The Contract Clause ensures that it cannot. *See Sveen v. Melin*, 584 U.S. 811, 818 (2018) (describing historical origins of Contract Clause); *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 241 (1978) (same). *See also* James E. Ely Jr., The Contract Clause: A Constitutional History 15–17 (2016) (describing view of Framers that security of contracts was essential to commercial stability).

To be sure, the Contract Clause is not absolute. It often yields to the government's power to make general law, which sets a backdrop for all contracts. But changing background law is different from rewriting already-negotiated deals. If the Contract Clause means anything, it is that the government may not simply reallocate rights under existing contracts just to benefit one side of the deal. *See Spannaus*, 438 U.S. at 242, 250 (striking down a state law that retroactively shifted burdens under a contract between employers and employees to guarantee the latter unbargained-for pension benefits); *Melendez v. City of New York*, 16 F.4th 992, 1037 (2d Cir. 2021) (explaining that law would not serve public purpose required by Contract Clause if it merely aimed to shift burdens from commercial tenants to commercial landlords).

The district court applied that basic principle here. It found that Local Law 52 likely violates the Contract Clause because it eliminates one party's contractual rights simply to benefit the other. The law forbids certain for-hire vehicle companies from deactivating drivers' accounts unless the companies can show "just cause." But in their existing contracts, the companies bargained for the right to deactivate a driver's account immediately and in their sole discretion. That right is central to

their contracts: they need discretion over access to their platforms to keep the platforms efficient and safe. Local Law 52 effectively eliminates their control and rebalances the contractual bargain to favor deactivated drivers. Given those effects, the district court's analysis was straightforward: the court identified a burden on contractual rights, found the City's justifications lacking, and enjoined the City from enforcing the law. *See* SPA21–22, 54.[2]

But now, the City and its *amici* sound the alarm. They say that the district court did more than just block one bad law; they say it also tied the hands of legislators in perpetuity. Local Law 52, they claim, is just one of many sector-specific labor laws. And by blocking one of these laws, the district court's rationale threatens them all. *See* State Br. 3–17; Unions Br. 20; Legal Aid Br. 19–25.

[2] Record citations are to the Special Appendix ("SPA") and the Uber Appendix ("UA"). "City Br." is the City's opening brief (Dkt. 33.1); "State Br." is the brief of the Attorney General of the State of New York (Dkt. 47.1); "Unions Br." is the brief of Unions and Workers' Rights Advocates (Dkt. 68.1); and "Legal Aid Br." is the brief of The Legal Aid Society, Legal Services NYC, and other amici (Dkt. 74.1). Page numbers for the amicus briefs are to their internal pagination.

That's just not the case. The district court neither disapproved of sector-specific laws nor stopped legislators from passing new ones. The City and its *amici* attack an opinion the district court never wrote.

First, they cite more than a dozen laws that they claim are threatened by the district court's analysis. But none of these laws is comparable to Local Law 52. For example, many of them are employment laws, *e.g.*, N.Y. Labor L. §§ 653(1) (minimum-wage boards), 789(1)–(3) (warehouse employee injury-reduction programs), which regulate a different kind of contract. Employment contracts are presumed to be at will; they are effectively renewed every day under the terms currently on offer. *Hanlon v. Macfadden Publ'ns*, 302 N.Y. 502, 505–06 (1951). And when they are renewed, they incorporate the background law, which the government is free to change. *See Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 430 (1934) (contracts incorporate prevailing background law when made). That makes employment contracts—and employment laws—different. Employment laws affect employment contracts only prospectively as those contracts are renewed through daily performance. The laws therefore do not shift fixed rights or obligations as Local Law 52 does. *See Baron v. Port Auth. of New York & New Jersey*, 271 F.3d 81,

88–89 (2d Cir. 2001) (finding no impairment to at-will employment contract because the contract included no fixed terms to impair). They are different in kind.

The City and its *amici* also cite a few laws regulating non-employees. For example, they point to the New York State and New York City Freelance Isn't Free Acts, which regulate the terms of certain freelance contracts. Those laws, however, apply only to contracts made after their effective dates. They specifically exempt contracts in effect at the time the laws were passed. *See* S. 5026, 2023–2024 Reg. Sess., § 4 (N.Y. 2023); N.Y.C. Local Law 140 of 2016, § 3. They do not purport to amend, shift, or reallocate existing contractual rights—which again, is the whole point of Local Law 52. *See* SPA38 (concluding that Local Law 52 was likely "passed in the pursuit of the interests of a narrow class"). They are also different in kind.

Ultimately, these laws do not make the point the City and its *amici* want them to make. Instead, they show how unusual Local Law 52 is. Alone among these laws, Local Law 52 rewrites a core term of a fixed contract. It is also alone in applying retroactively, reaching deactivations

as many as seven years old. Nothing in the City's and *amici*'s catalogue resembles it. It is uniquely offensive to the Contract Clause.

Second, the City and its *amici* say that the district court condemned sector-specific regulation. But search the court's opinion, and one will find nothing about sectoral laws. Instead, one will find only a straightforward application of longstanding doctrine: the district court held only that when the City impairs a contractual obligation, it must point to some broader social or economic interest—that is, an interest other than simply benefiting one side of the deal. *See* SPA32–38. That is no radical limit on regulatory power; it is the Contract Clause's long-settled core. *See Spannaus*, 438 U.S. at 250 (Contract Clause does not permit a law that does not even purport to deal with a "broad, generalized economic or social problem").

Third, the City and its *amici* claim that Local Law 52 will help workers in the aggregate. But their logic contradicts basic economics. In effect, Local Law 52 limits deactivations. Limits on deactivations will raise the cost of labor. Firms will respond to those costs by hiring fewer workers. The result will be fewer opportunities for people who would like the work in the future. And while incumbent workers may enjoy more job

security in the short run, those short-run benefits are not the kind of broad social or economic interest required to satisfy the Contract Clause. These benefits are instead the hallmark of special-interest legislation—legislation designed to benefit one side of the contract and burden another. That is exactly what the Contract Clause forbids.

ARGUMENT

I. LOCAL LAW 52 IS UNLIKE EVERY SECTOR-SPECIFIC LAW CITED BY THE CITY'S *AMICI*

The City's *amici* offer a long list of state and local laws that, they say, are imperiled by the district court's decision. State Br. 3–17; Unions Br. 20; Legal Aid Br. 19–25. The *amici* say that these laws and Local Law 52 are of a piece: they all belong to the same tradition of sector-specific labor regulation. So if Local Law 52 goes down, they say, these other laws will go down as well.

That is nonsense. The district court did not fault Local Law 52 because it regulates a single sector. Rather, the court faulted the law because it rewrites a core contractual term—the right of a for-hire vehicle company to deactivate a driver's account in its sole discretion. That right is embedded in fixed written contracts that can be modified only

according to their terms. These other laws, then, are implicated only if they also rewrite a core term of a fixed contract. None of them do.

A. Background employment laws do not impair employment contracts because employment contracts are presumed to be terminable at will.

To start, nearly every statute the amici cite regulates employment: the Scaffold Law (N.Y. Lab. Law §§ 240–241); the wage-board law (*id.* § 653); the Warehouse Worker Protection and Injury Reduction Acts (*id.* §§ 780, 789); the domestic-worker protections (id. §§ 691, 692); the N.Y. State WARN Act (*id.* § 860-a(1)); the security-guard wage law (N.Y.C. Admin. Code § 20-1601); the fast-food just-cause law (id. §§ 20-1201, 20-1271); and the building-service-worker retention laws (*id.* § 22-505). State Br. 3–17; Legal Aid Br. 23–25. Each fixes terms for employees. And in New York, employees are presumed to be employed at will.

At-will employment is "a relationship in which the law accords the employer an unfettered right to terminate the employment at any time." *Murphy v. Am. Home Prods. Corp.*, 58 N.Y.2d 293, 304–05 (1983). Where employment is "for an indefinite term it is presumed to be hiring at will which may be freely terminated by either party at any time for any reason or even for no reason at all." *Id.* at 300; *accord Sabetay v. Sterling*

Drug, Inc., 69 N.Y.2d 329, 334–36 (1987). The relationship is therefore best understood as an ongoing series of offers and acceptances. The employee accepts the employer's terms by showing up to work. And when the employer changes the terms, the employee either accepts them by coming back or rejects them by leaving. *See Hanlon v. Macfadden Publ'ns*, 302 N.Y. 502, 505–06 (1951) (change to terms of hiring at will "result[s] in a new or a rehiring"). *See also Kronick v. L.P. Thebault Co.*, 70 A.D.3d 648, 649 (2d Dep't 2010) (employer may alter terms "prospectively, subject to the plaintiff's right to leave"; by remaining, employee "is deemed to have accepted them"); *Gebhardt v. Time Warner Ent.-Advance/Newhouse*, 284 A.D.2d 978, 979 (4th Dep't 2001) (same).

That structure matters for the Contract Clause analysis. Under the Contract Clause, every new contract is made against, and incorporates, the background law. *See 2 Tudor City Place Assocs. v. 2 Tudor City Tenants Corp.*, 924 F.2d 1247, 1254 (2d Cir. 1991). So when the government changes the law governing employment, the change is folded into the employment contract the next day. No term of any fixed agreement is impaired, because there is no fixed agreement. Each day brings a fresh deal. *See Hanlon*, 302 N.Y. at 505–06.

The Second Circuit recognized this point in *Baron v. Port Authority of New York & New Jersey*, 271 F.3d 81, 88 (2d Cir. 2001). There, a pair of employees were laid off by the Port Authority. They claimed that the layoffs violated the (implied) terms of their employment contracts and sued under the Contract Clause. But the court rejected the challenges because, it reasoned, the challengers were employed at will. As employees at will, they had no fixed contractual right to continued employment. They could be terminated at any time and for any reason. They therefore had no contractual right to hang their claims on. *See id.* ("The absence of a contractual relationship beyond that of mere at-will employment is fatal to the plaintiffs' Contract Clause claim.").[3]

This is where the *amici* go wrong. Citing a century's worth of employment laws, they say that these laws have never been found to violate the Contract Clause. State Br. 3–17; Legal Aid Br. 23–25. But of

[3] *Amicus* does not contend that at-will status removes a contract from the Clause altogether. *See DoorDash, Inc. v. City of New York*, 692 F. Supp. 3d 268, 291 (S.D.N.Y. 2023) (impairment of terminable-at-will contract can support Contract Clause claim) (citing *United Healthcare Ins. Co. v. Davis*, 602 F.3d 618, 628 (5th Cir. 2010)). The point is narrower: when a law merely changes the terms on which an at-will relationship will be renewed day by day, there is no continuing contractual term for it to impair. *See Baron*, 271 F.3d at 88–89.

course they haven't. The Contract Clause protects only fixed contractual terms; and no such term is implicated by a law that merely changes the background rules governing employment at will. *See Baron*, 271 F.3d at 88 (no Contract Clause claim based on an at-will employment contract).

B. Local Law 52 alone rewrites a core term of a fixed, written contract—and reaches back seven years.

Local Law 52 is different in kind. It does not simply change a background rule of law, which is then incorporated into private agreements. It instead rewrites a core term of a fixed contract. The for-hire vehicle companies and drivers have contracts setting out specified terms for deactivation. Those terms don't shift day to day: they change only when the parties change them according to the methods set out in the contracts themselves. So by overriding the contracts' deactivation terms—indeed, rewriting them retroactively—Local Law 52 impairs fixed contractual terms and triggers the Contract Clause in a way unlike any of the other laws cited.

The contracts themselves show the difference. To start, Uber's Platform Access Agreement ("PAA") is effective when accepted and continues until terminated. UA145 (PAA § 5.1). A driver can terminate on seven days' notice, and Uber can terminate when it finds (in its

discretion) that the driver has committed a material breach. But until either side exercises its right to terminate or modify the terms, the terms remain in effect. They do not, as in an at-will employment arrangement, renew every day according to what's on offer.

The same is true of Lyft's contracts. Under Lyft's Terms of Service ("TOS"), the parties' arrangement is fixed until changed. Lyft can change the terms only with notice, after which a driver may accept by continuing to use Lyft's platform. *See* TOS § 2. But the terms do not, as in at-will employment, change from day to day, incorporating the terms on offer. They are set until modified by the parties. *See id.*

That point is crucial. The companies' contracts are fixed and determinate: they stay in place until the parties affirmatively change them. *See* PAA § 5.1; TOS § 2. The same is not true of employment-at-will contracts. In employment at will, contracts are neither fixed nor determinate; their terms are inferred from the parties' performance, which can change day to day. *Hanlon*, 302 N.Y. at 505–06. In other words, employment contracts are readily mutable. And because they are readily mutable, they cannot be impaired by a change in the background law. But such a

change can impair a fixed contract term, like the deactivation terms in the contracts here.[4]

Nor are these fixed terms ancillary or insignificant to the overall deal. Both Uber and Lyft submitted evidence that they would not have entered the contracts had they known they would lack discretion over deactivation. They need that discretion to control access to their platforms, which is essential to keeping the platforms well-functioning and safe. UA33. The district court therefore found that these terms were "central" to the original bargain—a bargain that Local Law 52 wipes away. *See* SPA24–27 (finding that the companies were likely to show that Local Law 52 substantially impairs their contracts).

None of the cited employment laws goes so far. None of them singles out a core contractual term and rewrites it—much less rewrites it as far as seven years in the past. At most, these laws change background legal rules, which are then incorporated into employment contracts

[4] That result does not change simply because the contracts can be terminated. Under either contract, the company and the driver can each terminate the deal. *See* PAA § 5.1; TOS § 2. But the question isn't whether the contract is terminable; it's whether the contract is fixed. Employment-at-will contracts are not fixed, but the companies' contracts are: their terms are constant until the parties affirmatively change them according to the procedures set out in the agreements themselves.

prospectively. *See Baron*, 271 F.3d at 88; *Hanlon*, 302 N.Y. at 505–06. The laws simply operate in a different way—a way that raises none of the Contract Clause concerns raised by Local Law 52.

C. The other laws the *amici* cite preserve rights under existing contracts.

Amici also cite a handful of laws affecting non-employment contracts. But these too are different in kind. None of them retroactively rewrites a term of an existing contract. In fact, many of them expressly carve out existing contracts to avoid impairing fixed obligations. None of them, then, raises the same concerns as Local Law 52.

To start, the *amici* lean heavily on the State's and the City's Freelance Isn't Free Acts. State Br. 12–13; Legal Aid Br. 21–22. These laws require a "hiring party" to include certain terms in its contracts with freelancers. The laws also require the hiring party to pay the freelancer on time. But while both laws affect private contracts, both apply only to new contracts. The City's law "applies only to contracts entered into on or after" its effective date. N.Y.C. Local Law 140 of 2016, § 3. Likewise, the State's applies "only to contracts entered into on or after such effective date." S. 5026, 2023–2024 Reg. Sess., § 4 (N.Y. 2023). Neither

impairs a contract in place when it took effect. Neither, then, raises the same concerns as Local Law 52.

Amici also cite other laws protecting existing contracts. For example, the hospital workplace-violence law does not "diminish, supplant or restrict" rights under an existing collective-bargaining agreement. N.Y. Pub. Health Law § 2832(3). Likewise, the Warehouse Worker Injury Reduction Program preserves existing, active safety committees formed through collective bargaining. N.Y. Lab. Law § 789(6). The Fashion Workers Act also carves out rights and privileges set out in collective-bargaining agreements. *Id.* § 1039. So does the City's security-guard wage law. N.Y.C. Admin. Code § 20-1616. And so do the just-cause laws amici pull in from other jurisdictions. *See* 24 V.I.C. § 76(a) (allowing modification by union contract); Mont. Code Ann. § 39-2-912(1)(b) (exempting discharge of employee covered by "a written collective bargaining agreement or a written contract of employment for a specific term").

Legislatures draft these carve-outs for a reason. They understand that a fixed contract is different from at-will employment. Where a bargained-for term already exists, they leave it alone. Their respect for

contract rights accords with the Contract Clause, which forbids the government from rewriting contracts simply to benefit one side. That's what Local Law 52 tries to do, and that's what makes it different.

II. THE DECISION BELOW LEAVES GOVERNMENTS AMPLE ROOM TO REGULATE

Again, the City's *amici* describe the district court's opinion as a threat to sectoral regulation. They warn that, if affirmed, the opinion will leave governments "powerless" to address problems in particular industries. State Br. 22–23; Unions Br. 20–21. But again, this is wrong. Their argument both mischaracterizes the district court's opinion and overstates the effect on future policy. The opinion neither condemns sectoral regulation nor blesses it. It merely explains that sectoral regulation, like all regulation, must pass the Contract Clause's standard test. That is no innovation, much less a threat; it is a straightforward application of established law.

A. The district court did not condemn sector-specific regulation.

The City's *amici* start with a faulty premise. They say that the district court condemned Local Law 52 simply because the law focuses on a single sector. In other words, they say that the district court required

sectoral regulation to meet some heightened level of scrutiny. *See* State Br. 21 (citing SPA33).

But the opinion itself says no such thing. Instead, it says only that "a law does not serve a legitimate public purpose merely because it confers a meaningful benefit on an affected group; it must pursue 'society's larger interest,' rather than only 'the interest of a subset of individuals.'" SPA33 (quoting *Real Est. Bd. of N.Y., Inc. v. City of New York*, 182 F.4th 140, 2026 WL 2015138, at *16 (2d Cir. 2026) *("REBNY"), and Melendez*, 16 F.4th at 1037–38). And that interest, the court explained, must be "distinct from the immediate interests of [the law's] beneficiaries." SPA33–34.

That is no innovation; it is blackletter law. In *Spannaus*, the U.S. Supreme Court struck down a state law imposing a "pension-funding charge" on an employer that closed its offices in the state. The Court explained that the law was "not even purportedly enacted to deal with a broad, generalized economic or social problem," but instead altered the obligations of a narrow class of employers under existing contracts. 438 U.S. at 250. That purpose was too narrow to pass scrutiny. Though courts typically defer to legislatures on questions of social and economic policy,

legislatures are not free simply to rewrite contracts to rebalance the agreed-upon deal. *See id.* at 251 ("[I]f the Contract Clause means anything at all, it means that Minnesota could not constitutionally do what it tried to do to the company in this case.").

The district court did nothing more than apply that principle. Surveying the record, it found that Local Law 52 aimed to correct the "loss of income and procedural protections experienced by drivers." SPA34. But the drivers, like the employees in *Spannaus*, were only one side of an existing contract. The City could not revise the contract just to give the drivers a benefit they never bargained for. The City had to point to some other general social or economic purpose; and the record showed none. The conclusion was therefore straightforward: like the law in *Spannaus*, Local Law 52 was likely unconstitutional. *See* SPA33–34.

To be sure, the district court did emphasize that Local Law 52 would benefit only a small number of drivers. The court found that only 1% of Uber drivers are deactivated each year, which works out to about 0.06% of the City's overall population. SPA34. But the district court did not cite those figures, as the *amici* suggest, as some kind of constitutional threshold. Rather, the district court was merely emphasizing the law's

narrow scope. It explained that when the government substantially impairs a contract, it must justify the impairment by pointing to a "larger interest" of society—not the "interest of a subset of individuals." SPA34 (quoting *Real Estate Bd.*, 2026 WL 2015138, at *16). The district court was merely pointing out that Local Law 52 was evidently designed to advance a narrow interest, not a "larger" one—as shown by how few people would actually benefit from it. *See id.*

That observation says nothing about sectoral laws as such. Nothing in the opinion suggests that sectoral laws are categorically suspect. Rather, at most, the opinion shows that sectoral laws, like other laws, must serve a social or economic purpose other than rebalancing an existing contract to benefit one side. That point is hardly novel; it is what the Contract Clause has always meant. *See Spannaus*, 438 U.S. at 250. *See also, e.g.*, *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 412 (1983) (explaining that the Contract Clause asks whether the government "is exercising its police power, rather than providing a benefit to special interests"); *Blaisdell*, 290 U.S. at 445 (explaining that the Clause does not permit laws passed "for the mere advantage of particular individuals").

B. Governments still have every regulatory tool they had before the district court's opinion.

More broadly, the City's *amici* claim that the district court's opinion will tie legislators' hands. They say it will block legislators from regulating a range of relationships currently covered by private contracts. Lawmakers will be unable to override those contracts for the public good; and, presumably, chaos will ensue. *See* State Br. 22; Unions Br. 16.

Nothing in the actual opinion, however, justifies this alarmism. In fact, the opinion poses no new barriers to legislation. The district court found only that Local Law 52 impairs existing contracts simply to benefit one side of the deal. The law also rewrites those contracts retroactively, upsetting decisions made as long as seven years ago. Those unusual features led the district court to conclude that, most likely, the law violates the Constitution. SPA24–27, 31, 53. That conclusion says nothing new about normal lawmaking.

The district court's opinion makes all this clear. The court plainly left governments with leeway to protect third parties from externalities. See SPA33–34 (distinguishing *Real Estate Bd.*, which involved spillover effects on the housing market). It left leeway to intervene to protect the

public in an emergency. *See id.* (distinguishing *Buffalo Tchrs. Fed'n v. Tobe*, 464 F.3d 362, 367–68 (2d Cir. 2006), which involved a fiscal crisis). It also left governments free to pass minimum employment standards, which again, merely set the background rules for employment at will. *See* SPA29 (distinguishing the City's just-cause law for fast-food employees).

If future policymakers find their hands tied, it will have nothing to do with the district court's opinion. The opinion says only that they may not simply rewrite existing contracts just to rebalance the deal. That was already the law; the district court's opinion does not change it. The opinion merely applies established law to an unusually dramatic example of legislative overreach.

III. LOCAL LAW 52 WILL HARM WORKERS AS A CLASS

Finally, the City and its *amici* insist that Local Law 52 benefits not only deactivated drivers, but drivers as a class. They say that all drivers benefit from limits on deactivation because all drivers live in fear of an unfair deactivation, whether they are deactivated or not. In effect, they argue, the law benefits drivers as a group by giving them peace of mind. *See* Unions Br. 21; Legal Aid Br. 20–21. *See also* City Br. 52.

The district court doubted whether so vague a benefit could ever qualify as a "broader social or economic interest." But even if it could qualify in theory, it wouldn't here because it is wrong. Local Law 52 effectively limits deactivations. And limits on deactivations will not, in fact, benefit workers as a group. Instead, as research on discharges in the employment context show, these limits benefit incumbent workers at the expense of future workers. The *amici*'s argument ignores that basic fact of textbook economics. The district court was right to reject it.

A. Limits on discharge harm workers as a class.

Labor markets are healthy when they are dynamic. Dynamism, in turn, is the movement of workers between jobs and firms. In dynamic markets, workers move quickly and efficiently between jobs, which helps them find better matches. Better matches, in turn, make them more efficient, boost economic growth, and help create even more jobs—a virtuous cycle. *See* Cong. Rsch. Serv., IN10506, *Declining Dynamism in the U.S. Labor Market* (June 15, 2016), https://tinyurl.com/3x9vurbv (explaining dynamism and its desirable effect on labor markets).

Dynamism is not, however, an on-off switch. It is a rate, and that rate depends on two flows: the flow of workers into jobs and the flow of

workers out of them. *See id.* When both flows are smooth, dynamism is high: people can move between jobs at a low cost, and labor can be quickly reallocated through the market. *See id.* (connecting dynamism to better productivity, higher wages, and growth) ("Leaving one job for another has traditionally been an important method for workers to make better—more productive—job matches, raise their wages, and advance their careers."). By contrast, when these flows are impeded, the cycle slows down. Labor reallocates more slowly. Costs rise, and the labor market becomes less responsive overall. *See* Steven Davis & John Haltiwanger, *Labor Market Fluidity and Economic Performance*, NBER Working Paper No. 20479, at 11–12 (2014).

Just-cause standards reduce dynamism by squeezing the "out" flow. They make it harder, and more expensive, to separate workers who are a bad fit. When separations become more expensive, firms become choosier about whom they hire because the person will be hard to remove. That is, they slow the "in" flow as well. Over time, fewer jobs appear on the market, slowing the cycle even more. Fits are worse, wages are lower, and nearly everyone is worse off. *See* Edward P. Lazear, *Job Security Provisions and Employment*, 105 Q.J. Econ. 699, 700 (1990) (explaining

that limits on discharge, such as mandatory severance pay, have both increased unemployment rates and reduced the size of the labor force overall). *See also* Juan Botero et al., *The Regulation of Labor*, 119 Q.J. Econ. 1339, 1339 (2004) (making the same point about pervasive labor regulation in general).

The economic literature bears this out. Economists have repeatedly found a negative correlation between limits on discharge and employment levels. The findings range from highly adverse, with employment declining as much as 3%, to modestly negative, with declines measured from 0.8 to 1.7%. *See, e.g.*, David H. Autor, John J. Donohue III & Stewart J. Schwab, *The Costs of Wrongful-Discharge Laws*, 88 Rev. Econ. & Stat. 211, 211–12 (2006) (surveying literature). A handful of studies have found no measurable effect, in part perhaps because of the difficulty of pinpointing limits on discharge to specific places and times. *See id.* at 212–13. But no study has found, or even suggested, that limits on discharge have a positive effect on employment levels. *See id.* (explaining that studies have at best found no effect). There is no data supporting the theory that they help workers as a class. *See* Botero, *supra*, at 1375 (explaining that the data show "no benefits, and some

costs" associated with labor regulations, including limits on discharge, such as higher unemployment among young workers).

Comparisons between the United States and European countries point the same way. European countries tend to have stricter discharge rules, such as notice periods and mandatory severance. These rules are associated with lower turnover, longer unemployment spells, and weaker entry for young and lower-productivity workers. An especially vivid example comes from France: after 1956, France adopted a series of job-protection measures, from advance-notice rules to mandatory severance payments. *See* Lazear, *supra*, at 700, 719–20. Over the next three decades, its unemployment rate rose from roughly one percent to roughly ten percent, an increase that many economists attribute substantially to the loss of labor-market dynamism. *See id.* *See also* OECD Employment Outlook 63 (2004), https://tinyurl.com/2w7fy7x7 (explaining that European employment-protection laws tend to make it harder for unemployed workers to find new jobs and so elongate spells of unemployment).

Restrictions on discharge also harm workers in ways that may not show up in the raw unemployment figures. For example, in Europe, they

have incentivized firms to get more labor from temporary sources, such as short-term labor contracts. These contracts are associated with lower rates of training, higher turnover, and slower productivity growth. By one estimate, they account for as much as 20% of measured dispersion in training and productivity among OECD nations. *See* Joaquín Naval & José I. Silva, *Quantitative Effects of Employment Protection in OECD Labor Markets*, 94 Manchester Sch. 398 (2026).

There is no reason to think the result will be different in New York City. More likely, some incumbent drivers will experience modestly higher job security. But as these drivers move into new jobs, companies will recruit replacement drivers more slowly. Aspiring drivers will find fewer spots. The workforce will shrink, costs will rise, and growth will slow. These harms will be widespread, while the benefits will be narrow, helping only the small number of drivers deactivated each year. And the cost of those benefits will be paid for by the untold number of potential drivers who never get an opportunity to work. *See* Lazear, *supra*, at 706 (explaining that in economic terms, limits on discharge effectively transfer wealth from outsiders to incumbents); Autor et al., *supra*, at 211 ("Economic theory suggests that employment protection is a double-

edged sword. It provides employment security to incumbent workers but makes employers reluctant to hire, leading to a less flexible labor market with potentially lower employment and wages.").

The *amici*'s premise is therefore incorrect. Local Law 52 does not benefit all drivers; it benefits only a narrow slice of incumbents. That benefit is not free: it comes at the cost of broader dynamism and future opportunities. In labor markets, there is no free lunch.[5]

B. Local Law 52 elevates narrow interests over the interests of society at large.

The point isn't just that Local Law 52 is bad policy, but that the law doesn't meet the constitutional minimums. Under the Contract Clause, when courts ask whether a law pursues "society's larger interest" or only "the interest of a subset of individuals," *Melendez*, 16 F.4th at 1037–38, they are asking, in part, whose interests the legislature counted. And here, future drivers count. Those drivers are vulnerable; they have no contracts, no relationship with the companies, and no way to protect their

[5] *Amici* point to a City Comptroller report on the fast-food just-cause law reporting an 18% increase in hiring. Legal Aid Br. 24. That report concerns a different industry, with employees rather than independent contractors, over a short post-enactment period, and does not measure the counterfactual hiring that would have occurred without the law.

prospects. Current drivers, by contrast, made their own deals. They agreed to contracts that left the companies with discretion over access to the platforms. They did that because the contracts on offer gave them something valuable in return: access to work opportunities they would not otherwise have had. They thought that tradeoff was worth it. Now, Local Law 52 upsets that deal, gives them an unbargained-for benefit, and pays for that benefit with the opportunities of untold future drivers.

If the Contract Clause means anything, it means that the government cannot sacrifice the rights of everyone else just to give a few incumbents a benefit they never bargained for. That is the very definition of a law conferring "a benefit to special interests." *Energy Reserves*, 459 U.S. at 412.

CONCLUSION

This Court should affirm the district court's order granting a preliminary injunction.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 5,967 words, excluding the parts exempted by Fed. R. App. P. 32(f).

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/s/ Eli Z. Freedberg