UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, Plaintiff, v. THE CITY OF SEATTLE, *et al.*, Defendants.	No. C16-0322RSL ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

This matter comes before the Court on "Defendants' FRCP 12(b)(1) Motion to Dismiss." Dkt. # 30. City of Seattle Ordinance 124968 took effect on January 22, 2016, by operation of SMC 1.04.020(B) after the Mayor declined to sign and returned it to the City Council. The Ordinance provides a mechanism through which for-hire drivers can collectively bargain with the companies that hire, contract with, and/or partner with them. Dkt. # 31-1 at 5-25. Plaintiff, the Chamber of Commerce of the United States of America, seeks to enjoin enforcement of the Ordinance, arguing that it violates and is preempted by federal antitrust law, is preempted by the National Labor Relations Act, and violates the Washington Consumer Protection Act and the Washington Public Records Act. Two entities that qualify as "driver coordinators" under the Ordinance are members of the plaintiff organization. In this motion, defendants argue that the Chamber lacks standing to pursue its claims and that the claims are not prudentially ripe.

Having reviewed the memoranda, declarations, and exhibits submitted by the parties and having heard the arguments of counsel, the Court finds as follows:

A. STANDING

The judicial power of the federal courts extends to "Cases" and "Controversies" pursuant to Article III, Sec. 2 of the United States Constitution. In order to give meaning to those limitations, courts have developed the doctrine of standing, which makes clear that the role of the courts is "neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies." Maldonado v. Morales, 556 F.3d 1037, 1044 (9th Cir. 2009). Standing "is built on separation-of-powers principles [and] serves to prevent the judicial process from being used to usurp the powers of the political branches." Clapper v. Amnesty Int'l USA, 568 U.S. __, 133 S. Ct. 1138, 1148 (2013). "The party invoking federal jurisdiction bears the burden of establishing standing." Id.

To establish the existence of an Article III case or controversy, plaintiff must show that "(1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual and imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant[s]; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180-81 (2000) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)). An association, such as the Chamber, "has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Hunt v. Wash. State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977).

1. Standing of Individual Members

The Chamber has presented evidence that Uber Technologies, Inc., and Eastside for Hire, Inc., are members of the Chamber of Commerce and qualify as "driver coordinators" under the Ordinance. The Chamber asserts that these members face a substantial risk of future injury and are suffering present harm as a result of the Ordinance.

a. Future Injury

Under the Ordinance, unions and other representational organizations may request recognition as a qualified driver representative ("QDR"). If recognition is granted, the QDR contacts the driver coordinator whose drivers it seeks to represent in order to obtain contact information for all qualifying drivers. The QDR then uses the contact information to solicit the drivers' interest in being represented by the QDR. If a majority of the qualifying drivers express an interest in being represented, the City will certify the QDR as the exclusive driver representative ("EDR") for all drivers associated with that driver coordinator. If no EDR is certified, the driver coordinator shall not be the subject of another representational drive for at least twelve months. If an EDR is certified, the driver coordinator must meet and negotiate with the EDR regarding topics such as vehicle equipment standards, safe driving practices, the nature and amount of payments to drivers, and hours and conditions of work.

The Chamber argues that Uber and Eastside will be injured in the first instance if they have to turn over the contact information for their drivers. Not only would the production force Uber and Eastside to expend time and money, but the Chamber argues that the disclosure of driver lists would destroy the value of Uber and Eastside's intellectual property/trade secrets and impinge on the privacy of the third-party drivers. As the City points out, however, whether Uber or Eastside will be the target of a representational drive is far from certain. While one can reasonably assume based on the legislative history that Teamsters Local 117 is interested in pursuing certification as an EDR, there is no indication that it has set its sights on the drivers

associated with either Uber or Eastside.

The "injury in fact" requirement of the Article III standing analysis helps ensure that the plaintiff has a personal stake in the prosecution and outcome of the litigation. Warth v. Seldin, 422 U.S. 490, 498 (1975). A speculative or hypothetical interest is deemed insufficient "so as to reduce the possibility of deciding a case in which no injury would have occurred at all." Lujan, 504 U.S. at 564 n.2. An allegation of an injury arising entirely in the future will suffice only "if the threatened injury is certainly impending[] or there is a substantial risk that the harm will occur." Susan B. Anthony List v. Driehaus, __ U.S. __, 134 S. Ct. 2334, 2341 (2014) (internal quotation marks omitted). Whether Uber or Eastside, neither of which has been called upon to produce driver lists or to engage in collective bargaining, has suffered an "actual or imminent" injury for purposes of Article III depends on whether there is "a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." Lujan, 504 U.S. at 560; Babbitt v. Farm Workers, 442 U.S. 289, 298 (1979).

Any injury arising from the recognition of a QDR – whether that be the obligation to disclose driver contact information or the need to engage in collective bargaining – is wholly contingent on the QDR's choice of target. It is, of course, possible that a QDR will attempt to represent the drivers associated with Uber and/or Eastside as soon as the processes set forth in the Ordinance commence. The Court finds, however, that it is just as likely, if not more so, that a QDR, once recognized, will choose to work through the procedures for the first time with a driver coordinator that has not made its antipathy toward collective action so well-known and/or is not primed to file suit immediately. The Chambers' theory of standing relies on a speculative chain of events controlled entirely by the choices of third parties not currently before the Court. See Clapper, 133 S. Ct. at 1150 ("In the past, we have been reluctant to endorse standing theories that require guesswork as to how independent decisionmakers will exercise their judgment."). The alleged future injuries are not "actual," nor has the Chamber shown that they

are "certainly impending" or otherwise imminent.[1] At this point in time, neither Uber nor Eastside has standing to challenge the validity of the representational and collective bargaining aspects of the Ordinance.

b. Present Injury

The Chamber argues that Uber and Eastside are currently incurring actual, on-going injuries, namely "(i) coerced compliance with the Ordinance's anti-retaliation provision, and (ii) the members' reasonable expenditures to prepare for the operation of the Ordinance, such as educating drivers about the impacts of unionization, participating in rulemaking, and hiring consultants and attorneys for assistance with union organizing and the collective-bargaining process." Dkt. # 39 at 12-13.

(i) Anti-Retaliation Provision

Eastside asserts that it "immediately wishes to amend its existing driver contracts to preclude drivers from providing statements of interest to any 'Qualified Driver Representative' seeking to act as an 'Exclusive Driver Representative' for purposes of collective bargaining under the Ordinance." Decl. of Samatar Guled (Dkt. # 42) at ¶ 11. Because the Ordinance precludes driver coordinators from providing or offering anything of value to drivers for the purpose of encouraging or discouraging them from exercising the right to participate in the representative process (Dkt. # 31-1 at 19), Eastside claims that the Ordinance is causing present injury.

Defendants have raised both a facial and a factual challenge to the Chamber's standing to

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[1] Recent events highlight the uncertainties associated with the injuries claimed by the Chamber. As discussed in the parties' supplemental letters to the Court, the City has requested six additional months in which to establish the rules by which drivers can indicate support or opposition to representation by a QDR. See http://www.seattletimes.com/seattle-news/politics/mayor-wants-more-time-on-unionizing-uber-lyft-drivers/

pursue this litigation. In effect, defendants assert that the Court lacks subject matter jurisdiction over this matter under Fed. R. Civ. P. 12(b)(1). In order to survive defendants' factual challenge, plaintiff must present evidence that could support factual findings in its favor. Maya v. Centex Corp., 658 F.3d 1060, 1067 (9th Cir. 2011); Kingman Reef Atoll Invs., LLC v. U.S., 541 F.3d 1189, 1195 (9th Cir. 2008). Eastside's allegation of injury – that it "immediately wishes" to engage in conduct that is arguably affected with a constitutional interest, but is now proscribed by the Ordinance (Babbitt, 442 U.S. at 298) – is contradicted by the actual facts of this case. The Ordinance was drafted in the fall of 2015, discussed and amended by the City's Finance and Culture Committee, and approved unanimously by the City Council on December 14, 2015. The bill was submitted to the Mayor for signature and returned unsigned at the end of 2015. By operation of SMC 1.04.020(B), the Ordinance took effect on January 22, 2016. The anti-retaliation provision, however, did not become effective for another 150 days. Dkt. # 31-1 at 23 (Section 5). There is no indication that Eastside made any effort to amend its driver contract during this extended period. Thus, on May 7, 2016, when Mr. Guled asserted that Eastside "immediately wishes" to amend its contracts, it could have done so: the anti-retaliation provision did not become enforceable until the end of June 2016. The fact that Eastside refrained from amending its driver contracts shows that it either did not want to make the change (contrary to Mr. Guled's statement) or that its decision not to amend was unrelated to the Ordinance. Either way, the Court finds that Eastside has failed to show, as a matter of fact, that the Ordinance caused its alleged injury.

(ii) Expenditures to Respond to Ordinance

Uber and Eastside contend that they have incurred costs as a reasonable reaction to the Ordinance, including hiring consultants and experts to help them navigate the world of organized labor, communicating with their drivers about the impacts of unionization, and participating in the City's rulemaking efforts. Any expenditures of time or money that are related to the City's

requests for driver data are completely voluntary. The Ordinance does not impose a duty on the driver coordinators to participate in the rulemaking process or to provide any information prior to the point in time when a QDR requests driver contact information.

With regards to the consultants and driver education activities, the harm Uber and Eastside are seeking to avoid is not certainly impending (as discussed above in Section A.1.a.). Uber and Eastside "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending . . . Any ongoing injuries that [Uber and Eastside] are suffering are not fairly traceable to [the Ordinance]. If the law were otherwise, an enterprising plaintiff would be able to secure a lower standard for Article III standing simply by making an expenditure . . . in response to a speculative threat." Clapper, 133 S. Ct. at 1151 (internal quotation marks and citations omitted).[2] While it may be "eminently reasonable" for driver coordinators "to take measures to prevent or mitigate the harm" they may face due to possible future representational efforts, they cannot parlay actions taken in reaction to a risk of harm into the necessary "certainly impending" injury. Habeas Corpus Res. Ctr. v. U.S. Dep't of Justice, 816 F.3d 1241, 1251 (9th Cir. 2016).

2. Standing of Association

Neither of the Chambers' members has suffered an injury that is traceable to the Ordinance and would be redressed if the Ordinance were declared invalid or enforcement were otherwise enjoined. Thus, the Chamber itself has no standing to pursue the claims asserted in this litigation.

B. RIPENESS

The Chamber lacks standing to pursue any claim in this matter, and the doctrine of ripeness cannot remedy the constitutional deficiency.

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[2] The City has not pursued its traceability and redressability arguments in its reply memorandum.

For all of the foregoing reasons, defendants' motion to dismiss (Dkt. # 30) is GRANTED. The Clerk of Court is directed to enter judgment without prejudice in favor of defendants and against plaintiff.

Dated this 9th day of August, 2016.

Robert S. Lasnik
United States District Judge