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IN THE SUPREME COURT

STATE OF ARIZONA

STATE OF ARIZONA, *ex rel.* MARK BRNOVICH, Attorney General, Petitioner, v. CITY OF PHOENIX, Arizona, Respondent.	Supreme Court No: CV-20-0019-SA **ROWE, ET AL.'S MOTION TO INTERVENE**

Ride-sharing drivers and passengers Paul G. Rowe, Stephen Keierleber, Mackenzie Semerad, Stephen Doucette-Riise, and Jeremiah Willet (collectively "Movants"), hereby move to intervene in this matter pursuant to Rule 2 of the Rules of Procedure for Special Actions, Rule 24 of the Arizona Rules of Civil Procedure, Rule 6 of the Arizona Rules of Appellate Procedure, and this Court's inherent authority to regulate its own proceedings. This motion is supported by the accompanying exhibits and the record before this Court. For the following reasons, the motion should be granted.

Introduction and Interest of Proposed Intervenors

Movants are ride-sharing drivers and passengers who have been providing or using ride-sharing services to and from Sky Harbor International Airport ("Sky Harbor") for several years. The drivers are service providers and independent contractors who use ride-sharing platforms, such as Uber and Lyft, to pick up and drop off passengers at Sky Harbor, among other places. They rely on the availability of ride-sharing services, including providing services at Sky Harbor, as a major source of income. The riders use ride-sharing platforms, such as Uber and Lyft, to get to and from locations throughout Phoenix and its suburbs, including to and from Sky Harbor. They rely on the availability of ride-sharing services as a safe, efficient, and inexpensive mode of ground transportation to access Sky Harbor.

The City of Phoenix Ordinance at issue substantially raised fees for ride-sharing services offered at Sky Harbor. The parties most directly affected by the fee increases are the ride-sharing drivers who provide services at Sky Harbor and the riders who use those services. As a result of the new and increased fees, ride-sharing drivers will see a reduction in business and a significant loss of income, and ride-sharing riders have lost a primary means of ground transportation and/or will bear the burden of paying substantially higher costs for ride-sharing services at Sky Harbor. They are precisely the sort of parties who were contemplated by the authors and voters who amended the Arizona Constitution by adopting Proposition 126 ("Prop. 126"). For the reasons that follow, Movants should be permitted to intervene in this action.

Facts and Procedural Background

On December 18, 2019, the Phoenix City Council ("City") passed Ordinance G-6650 ("Ordinance"), which amended the City Code to substantially raise fees on ride-sharing services provided at Sky Harbor. The City Council initially voted on and passed the fee increases on October 16, 2019. However, *the City* then determined that it had violated the notice requirements of A.R.S. § 9-499.15, a statute which forbids municipalities from "assess[ing] any new taxes or fees or increas[ing] existing taxes or fees," unless certain notification procedures are satisfied. *The City* therefore determined that its vote was invalid and scheduled a

new vote for December 18, 2019. Exhibit 1, City of Phoenix Public Notice: Tax & Fee Changes at ep.9. This is an admission on the part of the City that its action constituted a "tax[] or fee" "increase[e]."

Prior to adopting the Ordinance, the City imposed a $2.66 pick-up fee, under an ordinance adopted prior to the effective date of Prop. 126, and it imposed no drop-off fee for ride-sharing services at Sky Harbor. The City's December 2019 Ordinance: (1) increased the pick-up fee for ride-sharing services from $2.66 to $4.00, increasing annually to $5.00 in 2024 and then increasing annually thereafter based on the consumer price index; and (2) imposed a *new* drop-off fee along the same terms.

The text of the City Council Report on this action stated: "The proposal seeks to increase trip *fees* for permitted [ground transportation] providers, establish drop-off trip *fees* for providers, and provide for predictable, annual trip-*fee* rate increases" (emphasis added). Exhibit 2, Dec. 18, 2019 Phoenix City Council Report, Item No. 42 at 102.

The new and increased fees take effect on February 1, 2020.

On December 19, 2019, Representative Nancy Barto submitted a request to the Office of the Arizona Attorney General pursuant to A.R.S. § 41-194.01, whereby a member of the Legislature may ask the Attorney General to investigate whether a City ordinance "violates state law or the Constitution of Arizona."

A.R.S. § 41-194.01(A). Representative Barto's request asserted that the Ordinance violated article IX, § 25 of the Arizona Constitution (Prop. 126), a voter-approved constitutional amendment that prohibits any city from "impos[ing] or *increas[ing]* any sales tax, transaction privilege tax, luxury tax, excise tax, use tax, or *any other transaction-based tax*, *fee*, stamp requirement or assessment on the privilege to engage in, or the gross receipts of sales or gross income derived from, *any* service." (emphasis added).

The Attorney General investigated, and "reviewed relevant materials and authorities," including a "voluntary response and supporting materials" provided by the City. Exhibit 3, Investigative Report No. 19-002 at 3. The Attorney General completed his investigation within the statutory deadline, and concluded that "the Ordinance very likely violates article IX, § 25 of the Arizona Constitution," *id.* at 1, because the new and increased fees on ride-sharing services "fall[] within the plain language of the constitution's prohibition." *Id.* at 7.

The Attorney General filed this Special Action on January 21, 2020.

Movants filed this motion to intervene two days later, on January 23, 2020.

The Proposed Intervenors

As set out more fully in the accompanying declarations, Movants are ride-sharing drivers and passengers that will bear the burden of the new and increased fees assessed on ride-sharing services at Sky Harbor.

Movant Paul G. Rowe has been an Arizona resident for over 32 years and has been driving with Uber for approximately four years and Lyft for two years. Exhibit 6, Declaration of Paul G. Rowe at ¶¶ 2–4. Mr. Rowe has provided nearly 6,000 ride-sharing rides. In 2019, he provided approximately 1,500 rides to Uber passengers and 625 rides to Lyft passengers with a 4.92 out of five-star rating on Uber, and a similar rating on Lyft. *Id.* ¶¶ 7–8. He provides approximately 15 percent of his trips to and from Sky Harbor. *Id.* ¶ 11. Because trips to the airport are typically longer than an average trip, Mr. Rowe's profit on airport trips is 50 percent higher than an average ride. *Id.* ¶ 12. Mr. Rowe, a retiree, relies on ride-sharing services for part-time income. *Id.* ¶ 5.

Movant Stephen Keierleber is an Arizona resident who has been a driver on the ride-sharing platforms for nearly five and a half years, and an active driver since March 2019. Exhibit 7, Declaration of Stephen Keierleber ¶¶ 2, 7. In 2019, he provided 1,653 rides with Lyft and 10 rides with Uber, of which approximately five per week are to and from Sky Harbor. *Id.* ¶¶ 4, 9. Mr. Keierleber has a five-star out of five-star rating on Lyft. *Id.* ¶ 11. He regularly transports disabled passengers, who rely on ride-sharing services as their primary mode of transportation. *Id.* ¶ 17. Mr. Keierleber provides ride-sharing services as his primary source of income. *Id.* ¶ 8.

Movant Stephen Doucette-Riise is a resident of Chandler and is a regular user of ride-sharing services, primarily Lyft. Exhibit 8, Declaration of Stephen Doucette-Riise ¶¶ 2–3. In 2019, he used Lyft to travel to or from Sky Harbor six times. *Id.* ¶ 5. Lyft is a convenient and economical way for him to travel to and from Sky Harbor. *Id.* ¶ 8. He does not have a good alternative and would likely need to rely on family or friends for rides to Sky Harbor if ride-sharing was not available. *Id.* ¶ 10. The increased fees would therefore create a financial and personal burden for Mr. Doucette-Riise.

Movant Jeremiah Willett has been a resident of Phoenix since June 2018 and is a regular user of ride-sharing services, including those offered on the Uber and Lyft. Exhibit 9, Declaration of Jeremiah Willett ¶¶ 2–3. In 2019, he used Uber and Lyft to get to and from Sky Harbor airport for business travel six to seven times and for personal travel twice. *Id.* ¶ 5. Because his business trips can last for two weeks, Mr. Willett does not have a good alternative form of ground transportation to get to and from the airport in a manner that is as convenient and cost-effective as ride-sharing. *Id.* ¶¶ 6–8. The increased fees on these services would be a financial burden for Mr. Willett.

Movant Mackenzie Semerad is an Arizona resident and regular user of Uber and Lyft ride-sharing services. Exhibit 10, Declaration of Mackenzie Semerad ¶¶ 2–4. Ms. Semerad has used ride-sharing services since their inception,

approximately six years ago for both personal and business travel. *Id.* ¶ 4. In 2019, she used Uber or Lyft approximately twice per month for business travel. *Id.* ¶ 5. Ms. Semerad has felt unsafe in taxis and with the cessation of ride-sharing services to and from Sky Harbor, she does not have a good alternative for ground transportation. *Id.* ¶¶ 9–11.

Argument

Pursuant to Arizona Rules of Procedure for Special Actions Rule 2(b), persons may intervene in a Special Action "subject to the provisions of Rule 24 of the Rules of Civil Procedure." Movants satisfy the criteria for intervention as of right under Rule 24(a)(2). Permissive intervention is alternatively warranted pursuant to Ariz. R. Civ. P. 24(b)(1)(B).

A. Movants satisfy all four criteria for intervention as of right.

The ride-sharing Movants satisfy the criteria for intervention as of right. A third-party's ability to intervene as a matter of right is governed by Arizona Rule of Civil Procedure 24(a)(2). Under this rule, a party should be granted intervention as of right when four conditions are satisfied: (1) the motion is timely; (2) the movants claim an interest related to the subject of the action; (3) disposition of the action may, as a practical matter, impair or impede the movants' ability to protect their interests; and (4) existing parties do not adequately represent their interests. Ariz. R. Civ. P. 24(a); *Saunders v. Super. Ct.*, 109 Ariz. 424, 425 (1973). Rule 24

"should be liberally construed with the view of assisting parties in obtaining justice and protecting their rights." *Bechtel v. Rose*, 150 Ariz. 68, 72 (1986) (internal citations omitted). Movants satisfy each of these criteria.

First, Movants' motion to intervene is timely. Timeliness generally hinges on two questions, "including the stage to which the lawsuit has progressed when intervention is sought and whether the applicant could have attempted to intervene earlier." *State ex rel. Napolitano v. Brown & Williamson Tobacco Corp.*, 196 Ariz. 382, 384 ¶ 5 (2000). Here, the Attorney General filed his special action petition on January 21, 2020. Movants filed this motion two days later. That is timely by any measure.

Under A.R.S. § 41-194.01(B)(2), when an action by a city or town "[m]ay violate" the Arizona Constitution, "the attorney general shall file a special action in supreme court to resolve the issue." In other words, the law requires direct review in this Court as the first and only stage of judicial resolution. Because this is the first judicial stage to which this action has progressed, and because there was no earlier stage of judicial proceedings, movants intervened at the earliest possible opportunity. Because Movants will adhere to the briefing and argument schedule ordered by the Court, there will be no delay and no party will be prejudiced by Movants' participation.

Second, Movants plainly claim an interest related to the subject matter of this case. Movants are ride-sharing drivers and passengers who will be directly harmed by the City's action. Ride-sharing platforms Uber and Lyft have or will cease services at Sky Harbor Airport as a direct result of the challenged Ordinance. *See* Exhibits 4 (Letter from Lyft indicating that Lyft will cease services at Sky Harbor in January 2020) and Exhibit 5 (Letter from Uber indicating that Uber will cease services at Sky Harbor on January 31, 2020); *see also* Ex. 6 at ¶ 18; Ex. 7 at ¶ 20. Several Movants are ride-sharing drivers who regularly service Sky Harbor. For example, Movants Rowe and Keierleber regularly provide ride-sharing services to and from the airport. Ex. 6 ¶ 11; Ex. 7 ¶ 9. Movant Keierleber relies on ride-sharing as his primary source of income, and Movant Rowe relies on ride-sharing as a major supplemental source of income in retirement. Ex. 7 ¶ 8; Ex. 6 ¶ 5. Both will lose significant income as a result of the Ordinance. *See Saunders*, 109 Ariz. at 426 (parties with a "vested economic interest" in an action may intervene to protect that interest).

Even if the ride-sharing platforms resumed services at Sky Harbor, the exorbitant new and increased fees that were leveled only against ride-sharing services at the airport would hinder the business of Movants. Ex. 6 ¶ 14; Ex. 7 ¶ 14. Of note, the same Ordinance that *raises* fees for ride-sharing services at Sky Harbor immediately by 200 percent and by nearly 300 percent by 2024, essentially

maintains fees for *other* ground transportation providers such as taxis, which directly compete against Movants. Ex. 2 at 26. What's more, the average Lyft fare to and from the airport is $10.00. Exhibit 4 at 2. Movants charge or pay between $12.00 to $25.00 for rides to and from the airport. Ex. 6 ¶ 12; Ex. 10 ¶¶ 12-13; Ex. 9 ¶¶12–13. The Ordinance therefore represents an enormous rate increase that would plainly affect the desirability of ride-sharing as a ground transportation option to Sky Harbor.

The Movants who are ride-sharing *passengers* also have a plain interest in this case. They regularly use ride-sharing services to get to and from the airport. Some will be without safe alternatives for ground transportation to Sky Harbor. Ex. 10 ¶¶ 9–11. Additionally, the fees in the Ordinance will immediately be passed on to ride-sharing passengers in the form of higher fares. Ex. 6 ¶ 15; Ex. 9 ¶ 16; Ex. 10 ¶ 13. Thus, as a result of the Ordinance, Movants are currently without ride-sharing services on which they rely. And even if those services are resumed, under the Ordinance, they will pay substantially higher fares to get to the airport and may not be able to find comparable alternatives altogether. Ex. 6 ¶ 14; Ex. 9 ¶¶ 10, 11, 16; Ex. 10 ¶¶ 9, 13. Thus, both ride-sharing driver and passenger Movants claim not only *an* interest in this action, as is required by Rule 24, but they may very well claim the *most significant* interest in this case.

Third, disposition of this case could impede, indeed, entirely prevent, Movants from protecting their interests elsewhere. Because A.R.S. § 41-194.01(B)(2) *mandates* direct review in this Court, resolution of the question of whether the new and increased fees in the Ordinance violates article IX, Section 25 of the Arizona Constitution, will be definitively and finally resolved by this Court in this proceeding. In *Saunders*, the Court allowed intervention on the grounds that if the retirement fund at issue were declared unconstitutional, the beneficiaries of the fund "would have no chance in future proceedings to have its constitutionality upheld." 109 Ariz. at 425–26. Since "[t]he principles of stare decisis would effectively dispose of their interest without any opportunity for them to be heard," the intervenors there faced a "practical disadvantage to the protection of their interest" which "warrant[ed] their intervention as of right." *Id.* The same is true here. If Movants are not permitted to join this action, and the dispute is resolved in their absence, they would be precluded from bringing similar claims challenging the constitutionality of the Ordinance in any Arizona court.

Finally, the existing parties do not adequately represent Movants' interests. The State's interests diverge from those of Movants. First, courts typically grant intervention to private parties whose "more narrow, parochial interests" are affected by a case in which the Attorney General is required to pursue the "broad public interest." *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489,

1499 (9th Cir. 1995). "Inadequate representation is most likely to be found when the applicant asserts a personal interest that does not belong to the general public." *League of Wilderness Defenders—Blue Mountain Biodiversity Project v. Forsgren*, 184 F. Supp. 2d 1058, 1061 (D. Or. 2002) (citations omitted). Here, the Movants possess a personal interest that does not belong to the general public and which is inadequately represented by the Attorney General.

Because article IX, Section 25 prohibits not only cities and towns from imposing any new or increasing any existing taxes, fees, and other assessments, but also prohibits "[t]he state" from doing so, there may be limiting principles which the Attorney General might apply when interpreting Prop. 126's broad prohibitions and with which the Movants would differ. Indeed, the Attorney General must defend the state against any claims challenging fees, taxes, or assessments under Prop. 126 that are or may be imposed by the state. The state may therefore prefer an interpretation of article IX, Section 25 that is different or more permissive of government taxes, fees, and assessments than Movants'. *See Saunders*, 109 Ariz. at 426 (finding that although "the Attorney General represents the named state officials in the action … the petitioners have a vested economic interest in the fund, the subject of the action," and thus could intervene in a case challenging its constitutionality.). Indeed, the State directly regulates ride-sharing including the taxation of ride-sharing services. *See* A.R.S. § 28-9551 *et seq.* As a result, the

possibility of state regulation, fee imposition, or taxation of ride-sharing services occurring by the State is more than remote. The Movants' interests are therefore not adequately represented by the existing parties.

Intervention as of right does not require certainty. Instead, it *requires* intervention when a party "claims an interest relat[ed] to the subject of the action," and that disposing of the action in that Movants' absence "may … impair or impede the person's ability to protect that interest." Rule 24(a) (emphasis added). As shown above, Movant ride-sharing drivers and passengers satisfy this test.

B. Movants also satisfy the requirements for permissive intervention.

If the Court determines that Movants are not entitled to intervene as a matter of right, intervention is still warranted pursuant to Ariz. R. Civ. P. 24(b)(1)(B) and pursuant to this Court's inherent authority to regulate its own proceedings. Like intervention as a matter of right, permissive intervention "should be liberally construed with the view of assisting parties in obtaining justice and protecting their rights." *Mitchell v. City of Nogales*, 83 Ariz. 328, 333 (1958). Under this liberal standard, "the intervenor-by-permission does not even have to be a person who would have been a proper party at the beginning of the suit." *Bechtel*, 150 Ariz. at 72 (citation omitted).

Arizona courts consider several factors when determining whether permissive intervention is appropriate, "such as the nature and extent of the

intervenor's interest, his or her standing to raise relevant issues, legal positions the proposed intervenor seeks to raise, and those positions' probable relation to the merits of the case." *Dowling v. Stapley*, 221 Ariz. 251, 272 ¶ 68 (App. 2009). In addition, courts consider whether intervention "would unduly delay or prejudice the adjudication of the rights of the original parties." *Id.* (citation omitted). In addition to satisfying the higher criteria for intervention as of right, Movants satisfy these more permissive criteria.

First, the nature and extent of the interests that ride-sharing drivers and passengers have in new and increased fees that will harm their businesses, reduce their income, remove relied upon transportation options, and increase their liabilities is apparent, as set out above.

Second, both ride-sharing drivers and passengers have standing as a matter of law. "A party has standing to sue in Arizona if, under all circumstances, the party possesses an interest in the outcome of the litigation." *Alliance Marana v. Groseclose*, 191 Ariz. 287, 289 (App. 1997). Again, as set out above, Movants possess perhaps a greater interest in this litigation than either the State or the City. If this case were not currently pending in its unique procedural posture, Movants would certainly have standing to bring a case raising these issues. What's more, in Arizona, standing "is not a constitutional mandate" but a "prudential or judicial restraint." *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. in Ariz.*,

148 Ariz. 1, 6 (1985). Parties who have a direct economic interest in the outcome of this litigation that was caused by the City's Ordinance have standing to challenge that action as a legal matter and prudential one. *See* *Saunders*, 109 Ariz. at 426.

Third, Movants assert that the City violated the Arizona Constitution on several grounds. While some of Movants' arguments may overlap with those raised by the State, Movants assert different and important facts regarding their particular injuries, *see, e.g.*, Ex. 6 ¶ 14; Ex. 9 ¶¶ 11, 16; Ex. 10 ¶¶ 9, 13; Ex. 7 ¶¶ 13-14; Ex. 8 at ¶¶ 10, 13, and will likely advance legal arguments different from those offered by the State, as set out above.

Finally, intervention will not unduly delay these proceedings. Movants intervened within two days of the Special Action Petition, and will follow the same briefing schedule as is required of the other parties. Movants' participation in this case will therefore not cause any delay, or any prejudice to any existing party.

For these reasons, if the Court does not grant intervention as a matter of right, movants should be granted permissive intervention.

Conclusion

Based on the foregoing, Movant ride-sharing drivers and passengers respectfully request that this motion to intervene be granted and that

Movants be permitted to file a separate brief in support of the State of Arizona's Petition for Special Action.

Respectfully submitted this 23th day of January, 2020 by:

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