

Case Nos. A160701, A160706

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FOUR**

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

UBER TECHNOLOGIES, INC.; LYFT, INC.,
Defendants and Appellants.

On Appeal From The Superior Court Of San Francisco County
Case No. CGC-20-584402;
The Honorable Ethan Schulman, presiding

**AMICI CURIAE BRIEF BY MOTHERS AGAINST DRUNK DRIVING
AND THE CALIFORNIA STATE SHERIFFS' ASSOCIATION
IN SUPPORT OF DEFENDANTS AND APPELLANTS**

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INTRODUCTION

Drunk driving remains one of the greatest threats to public health and safety in California, causing billions of dollars of harm and inflicting untold suffering on thousands of victims and their families. California has invested billions of dollars in programs designed to reduce the incidence of drunk driving, and the ridesharing apps developed by Uber and Lyft complement these efforts by making affordable rides available for people who might otherwise drive while under the influence of alcohol or drugs.

Multiple studies have demonstrated that the widespread availability of ridesharing significantly reduces crime and the rates of drunk-driving crashes and fatalities. Indeed, when Uber was allowed to resume service in Portland and San Antonio after being briefly locked out by government orders, its return led to an immediate decrease in the incidence of drunk-driving crashes and fatalities. Studies looking at the impact of ridesharing on other metropolitan markets have reached similar conclusions: when ride-sharing becomes widely available, there is an “abrupt” and “absolute” decrease in DUI convictions and alcohol-related crashes

Yet when it issued its a preliminary injunction requiring Uber and Lyft to immediately reclassify drivers who use their apps as employees, the trial court completely *ignored* the devastating harms that would result from its order. Uber and Lyft have introduced evidence showing that, if the preliminary injunction is

upheld, they would be forced to shut down their apps in California, or at minimum dramatically reduce the number of drivers and terminate their presence in smaller markets and off-peak hours. These changes would deprive millions of Californians of safe, affordable, and convenient rides, nullifying Uber and Lyft's appeal as a reliable source of transportation and leading to an abrupt increase in the number of drunk-driving crimes, crashes, and fatalities. Because the trial court's preliminary injunction would impose substantial harms on the public that decisively outweigh any irreparable harms that would result absent an injunction, a preliminary injunction is not in the public interest. Accordingly, this Court should reverse the trial court's order and keep California's roadways safe by allowing Uber and Lyft to continue operating as normal during the pendency of the underlying litigation.

ARGUMENT

It is axiomatic that a preliminary injunction should not issue where the harm from granting the injunction outweighs the harm addressed by the injunction. (See *White v. Davis* (2003) 30 Cal.4th 528, 554; *IT Corp. v. County Of Imperial* (1983) 35 Cal.3d 63, 73; *O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1480.) Here, the analysis is straightforward: issuing an order effectively requiring Uber and Lyft to shut down, or dramatically downsize, their ridesharing apps would result in an increase in drunk driving crashes and fatalities. On the other hand, allowing Uber and Lyft to operate on their current model while this litigation is pending would not impose any *irreparable* harm to the public. If

Plaintiff ultimately prevails, any drivers that may have suffered financial injury during the pendency of this litigation are free to seek retrospective relief in a damages action. Because the balance of harms tips decisively against a preliminary injunction, the trial court's order should be reversed.

I. Drunk Driving Is A Dangerous Threat to All California Citizens

Drunk driving remains the number one cause of death on U.S. roadways. The National Highway Traffic Safety Administration (NHTSA) reports that drunk driving claims over 10,500 lives per year, amounting to almost 30 people killed a day. (*2018 Fatal Motor Vehicle Crashes: Overview*, National Highway Traffic Safety Administration, October 2019, DOT HS 812 826, available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812826> [reporting 10,511 deaths from drunk driving crashes in 2018].)

In addition to the societal costs resulting from these tragic deaths, the emotional turmoil suffered by the victims and families affected by drunk driving is incomprehensible. The staggering financial costs these victims suffer is largely hidden from public view, including lost wages, loss of support, funeral expenses, and expenses relating to past, continuing, and future medical care. NHTSA reports that the lifetime economic cost for each fatality is \$1.4 million, and it attributes over 90 percent of that amount to legal costs and lost workplace and household productivity. (*The Economic and Societal Impact Of Motor Vehicle Crashes, 2010 (Revised)*, National Highway Traffic Safety Administration, May 2015, DOT HS

812 013, p. 1, available at <http://www-nrd.nhtsa.dot.gov/Pubs/812013.pdf>.)

Additionally, each critically injured survivor costs an average of \$1 million. (*Id.*)

The estimated economic cost of all alcohol-impaired crashes in the U.S. in 2010 (the most recent year for which cost data is available) is over \$43 billion. (*Id.* at pp. 2–3.) Public funds covered roughly \$3 billion of that amount. (*Id.*) The total societal costs estimated to result from alcohol-involved crashes that year was an astounding \$236 billion. (*Id.* at p. 4.)

As the California Supreme Court has recognized:

The drunk driver cuts a wide swath of death, pain, grief, and untold physical and emotional injury across the roads of California and the nation. The monstrous proportions of the problem have often been lamented in graphic terms by this court and the United States Supreme Court. ... Indeed, in the years 1976 to 1980 there were many more injuries to California residents in alcohol-related traffic accidents than were suffered by the entire Union Army during the Civil War, and more were killed than in the bloodiest year of the Vietnam War. ... Given this setting, our observation that ‘[d]runken drivers are extremely dangerous people’ ... seems almost to understate the horrific risk posed by those who drink and drive.

Burg v. Municipal Court (1983) 35 Cal. 3d 257, 262 (citations omitted)

[*superseded by statute on other grounds as stated in People v. McNeal* (2009) 46

Cal.4th 1183].) As the state with highest number of drivers and vehicles in the country, even a small increase in the rate of drunk driving will have outside effects in California.

II. The Availability of Ridesharing Significantly Reduces The Incidence of Drunk Driving

Since its introduction in 2010, ridesharing has provided millions of Californians with safe, affordable, convenient, and reliable transportation. Many people use ridesharing services such as Uber and Lyft where they would otherwise drive themselves, such as trips to and from restaurants and bars, sporting events, concerts, and dinner parties at friends' houses. People regularly consume alcohol when dining out or attending recreational and social events, and without access to affordable and convenient transportation, many people will, unfortunately, choose to drive under the influence. Until recently, drinkers had few options for getting home after a night out: they could walk, which is often dangerous at night; use public transportation, which is not feasible in many areas; hail a cab, where availability is uncertain; or rely on a friend, where availability is even less certain. Many people thus opted to drive when attending such events, even if this meant driving home under the influence. Ridesharing has largely solved this problem by ensuring that rides will be available whenever and wherever they are needed. A person headed to a bar can leave the car behind, knowing that a sober driver will pick them up when they are ready to leave and drop them off safely at home for a modest fee. The availability of ride-sharing services thus plays a critical role in reducing alcohol-involved driving crashes by allowing individuals to leave their vehicles at home when their plans include alcohol.

In a large-scale survey of seven major metropolitan areas in the United States, including Los Angeles and San Francisco Bay Area, 33 percent of the respondents said ridesharing is “most important” to them “to avoid driving when I might have alcohol.” (Regina R. Clewlow and Gouri Shankar Mishra, *Disruptive Transportation: The Adoption, Utilization, and Impacts of Ride-Hailing in the United States*, U.C. Davis Institute of Transportation Studies (2017) pp. 9, 13, 23 [reporting that rideshare use had grown to more than 250 million users globally within its first five years].) Thirty-eight percent reported that they used ridesharing for “going to bars and parties,” and the U.C. Davis study explained this was “the most common” ridesharing purpose “[b]y a fairly wide margin.” (*Id.* at 11–12.) The availability of ridesharing thus keeps drunk drivers off the roads.

Numerous empirical studies have confirmed that the widespread use of ridesharing services decreases alcohol-related crashes and fatalities. For example, a study published in the *American Journal of Epidemiology* concluded that the resumption of Uber operations in Portland, Oregon after a temporary court-ordered closure “was significantly related to both an abrupt permanent and an abrupt temporary reduction in alcohol[-]involved crashes.” (Christopher N. Morrison, et al., *Ridesharing and Motor Vehicle Crashes in 4 US Cities: An Interrupted Time-Series Analysis*, 187 *Am. J. Epidemiology* (2018) 224, 226–27.) The study found that Uber’s reentry into Portland was associated with a 61.8% reduction in the rate of alcohol-involved crashes, and an absolute decrease of 3.1

alcohol-involved crashes per week. (*Id.*) The same study reported that San Antonio also experienced “an abrupt permanent reduction in the proportion of crashes that were alcohol-involved” after the government lifted an order temporarily banning Uber from the city. (*Id.* at 227 [noting that the study “detected relationships between alcohol[-] involved crashes and Uber’s [temporary] cessation in San Antonio”]).

A Southern Economic Journal report similarly concluded that the entry of ride-sharing services into a market lowers the rate of DUI arrests and fatal vehicular crashes. (Angela K. Dills and Sean E. Mulholland, *Ride-Sharing, Fatal Crashes, and Crime*, 84 S. Econ. J. (2018) 965–991.) This report shows that once Uber has operated in a county for four or more years, fatal crashes typically decline by 17 to 40 percent. (*Id.*) Another study out of the University of Texas reached similar conclusions. It estimated that ridesharing reduces fatal alcohol-related accidents by 10–11.4 percent, based on “strong evidence that the presence of ridesharing services induces a large number of people who would otherwise drive drunk to take alternative transportation.” (Frank Martin-Buck, *Driving Safety, An Empirical Analysis of Ridesharing’s Impact on Drunk Driving and Alcohol-Related Crime*, University of Texas at Austin, working paper (2017) p. 56.) It also calculated that “ridesharing’s presence ha[d] resulted in over 500 fewer fatal accidents since its introduction in 2010,” corresponding to a monetary benefit of over \$4.6 billion over five years. (*Id.* at 53.) The Martin-Buck study also found that DUI arrest rates

fall by 8.7–9.2 percent in cities with low to moderate transit usage due to rideshare entry. (*Id.* at 38.)

Another study conducted the same year estimated that the New York City boroughs of Manhattan, Bronx, Brooklyn, and Queens experienced a 25–35 percent decrease in alcohol-related collisions as a result of Uber’s entry into those markets, a reduction of around 43 crashes a month across the boroughs. (Jessica Lynn Peck, *New York City Drunk Driving After Uber*, City University of New York, working paper (2017) p. 3.) Official statistics compiled by the California Department of Motor Vehicles (“DMV”) support these findings. In 2019, the DMV reported significant reductions in DUI metrics between 2010—the year Uber launched in California—and 2017:

	2010	2017
DUI arrest rate (per 100,000 drivers)	823	458
Total DUI arrests	195,879	123,548
Total DUI convictions	148,042	98,430 (2016) (2017 Data Not Available)

(Helen N. Tashima & Sladjana Oulad Daoud, California Dep’t of Motor Vehicles, 2019 Annual Report of the California DUI Management Information System (2020) 5.) Although this DMV report shows an increase in alcohol-involved crash fatalities over the same timeframe, *id.*, there are many factors that contribute to these statewide numbers, and at least one report estimates that the fatality rate would be higher if not for Uber’s entry into the California market. (Brad

Greenwood and Sunil Wattal, *Show Me the Way to Go Home: An Empirical Investigation of Ride Sharing and Alcohol Related Motor Vehicle Homicide*, Fox School of Business Research Paper No. 15-054 (2015) p. 21 [estimating that the entrance of Uber X resulted in a 3.6–5.6 percent decrease in the rate of motor vehicle homicides per quarter in the state of California].) As these studies indicate, the ridesharing revolution has yielded dramatic public benefits by decreasing the likelihood that people will drive under the influence. In short, the safe and affordable transportation made possible by ridesharing apps like Uber and Lyft prevent crime, reduce social costs, and contribute to the quality of life in California.

III. A Preliminary Injunction Is Not In The Public Interest Because It Would Cause A Significant Increase In Drunk-Driving Related Deaths and Injuries

As Uber and Lyft have explained, the trial court’s preliminary injunction requiring them to immediately reclassify all drivers who use their apps as employees would force them to shut down or dramatically reduce the usage of their ridesharing apps. Indeed, “[w]hen this Court issued its supersedeas order, Uber was within hours of having to shut down the Rides app.” (Uber’s Op. Br., p. 15.) Lyft’s witness testified that requiring Lyft to reclassify all drivers as employees would force it to reduce or suspend services in smaller towns where demand is insufficient to justify a workforce of driver-employees paid on scheduled shifts. (7AA2056-2058 [¶¶42, 46]; 7AA2174-2176 [¶¶95-98]; see also Lyft’s Op. Br., p. 55.) Plaintiff does not dispute that the injunction would result in

a significant reduction of drivers, and would reduce or even eliminate the availability of ridesharing in smaller markets and during off-peak hours. (Lyft App. Reply Br., p. 53 [citing 7AA2056-2057 (¶42); 7AA2171-2172 (¶89)].) Nor does Plaintiff dispute that roughly 76% of drivers would lose the ability to use Uber’s Rides platform if the injunction is reinstated. (Uber Reply Br., p. 53.) There is thus uncontroverted evidence that the trial court’s preliminary injunction would substantially decrease the availability of ridesharing in California.

Given the results of the studies described above, there is little question that such a reduction would lead to a significant spike in drunk-driving related crashes and fatalities. If people are not confident that a ride will be available when and where they need it, they will resort to driving themselves—as many did before the advent of ridesharing. This is especially problematic today because people have become accustomed to imbibing alcohol at social events given the availability of ridesharing, and they may not reduce their consumption appropriately even though they are now behind the wheel instead of in the backseat. The trial court’s order would thus put thousands of lives at risk by increasing the number of drunk drivers on California’s roads and highways.

Pointing to *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, Plaintiff argues that the court must examine “only” harms to the parties, and that other public harms “are not properly part of the *IT Corp.* analysis.” (Resp. Br., p. 77 n.28.) But Plaintiff in this case represents the People of California, so any harms

the order would impose on California citizens ought to be considered in any balance of harms. Moreover, nothing in *IT Corp.* purports to nullify a court's ability to consider countervailing public interests in an injunctive relief analysis. (See *Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 854 [consideration of public interest "is not only permissible but mandatory"] [quoting *O'Connell, supra*, 141 Cal.App.4th at p. 1471]; *Teamsters Agricultural Workers Union v. Int'l. Brotherhood of Teamsters* (1983) 140 Cal.App.3d 547, 555; *Loma Portal Civic Club v. American Airlines, Inc.* (1964) 61 Cal.2d 582, 588.)

The trial court, meanwhile, declined to consider the harms its order would create because it believed that Uber and Lyft have "considerable financial resources" to comply with the preliminary injunction. (10AA2892.) But the trial court judge does not manage either company, and as Uber and Lyft have explained, there are both financial *and* technological barriers to switching from the current model to a driver-employee model. It was thus improper for the court simply to assume, based on no evidence, that Uber and Lyft could immediately comply with the court's preliminary injunction without any interruption in service. On the contrary, the trial court should have considered the harms to the public that would result if Uber and Lyft were forced to suspend or reduce their services.

Once these harms are considered, there is no question that a preliminary injunction is unwarranted. While an injunction forcing Uber and Lyft to shut down their apps would lead to an increase in drunk driving crashes and fatalities,

allowing Defendants to continue operating their services during the pendency of the litigation on the same model they have used for nearly a decade would not impose any costs to the public and will save countless lives. If the court ultimately concludes that drivers have been misclassified, drivers are free to seek damages that would make them whole. (See *Friedman v. Friedman* (1993) 20 Cal.App.4th 876, 890 [“monetary loss does not constitute irreparable harm”].) Deaths and serious injuries caused by drunk driving, on the other hand, are irreversible.

Because the public’s interest in safe roadways outweighs any countervailing interest in forcing Uber and Lyft to immediately reclassify drivers who use their apps, the injury facing the plaintiff here “pales in comparison to the injury that the injunction would impose on ... the public.” (*Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 634 [reversing preliminary injunction that put a hospital’s residency program “in jeopardy” and thus put the “health of the community” at risk”].)

CONCLUSION

For the foregoing reasons, the trial court’s order granting the mandatory preliminary injunction should be REVERSED.

Dated: October 1, 2020

Respectfully submitted,

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**CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.486(a)(6))**

I hereby certify that the attached amici curiae brief of Mothers Against Drunk Driving consists of 2,889 words as counted by the word processing program used to generate the brief.

Dated: October 1, 2020

/s/Robert Dunn
Robert Dunn

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