

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

Priorities USA, Rise, Inc., and the
Detroit/Downriver Chapter of the A.
Philip Randolph Institute,

Plaintiffs,

v.

Dana Nessel, in her official capacity as
Attorney General of the State of
Michigan,

Defendant,

and

Republican National Committee,
Michigan Republican Party, Michigan
House of Representatives, and
Michigan Senate,

Intervenor-Defendants.

No. 19-13341

JUDGE STEPHANIE
DAWKINS DAVIS

MAGISTRATE KIMBERLY G.
ALTMAN

**MOTION OF UBER
TECHNOLOGIES, INC. FOR
LEAVE TO FILE *AMICUS
CURIAE* BRIEF IN SUPPORT
OF PLAINTIFFS' MOTION
FOR SUMMARY
JUDGMENT**

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STATEMENT OF ISSUE PRESENTED

Uber Technologies, Inc. (“Uber”) has a compelling and unique interest in this litigation as Uber’s services in Michigan and expressive rights are directly implicated by the challenged law, Mich. Comp. Law § 168.931(1)(f) (the “Voter Transportation Law”). In recent election cycles, Uber has supported a number of initiatives to reduce barriers to voting, including, in the most recent presidential election cycle, Uber’s Rides to the Polls Program, where riders could receive 50% off rides to or from polling locations (up to \$7 off each way). Uber’s proposed brief explains how the Voter Transportation Law is unconstitutionally vague and chills Uber’s expression of support for the democratic process and the value of civic participation. Accordingly, the issue before the Court is whether Uber’s *amicus* brief provides unique information or perspective that can help the Court beyond the help that the lawyers for the parties are able to provide. Uber respectfully submits that the proposed brief provides the requisite unique information or perspective that is appropriate in an *amicus* brief.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Cases

United States v. State of Mich., 940 F.2d 143, 165 (6th Cir. 1991)

Dow Chem. Co. v. United States, No. 00-10331-BC, 2002 WL 33012185 (E.D. Mich. May 24, 2002)

Ryan v. Commodity Futures Trading Comm'n, 125 F.3d 1062 (7th Cir. 1997)

Statutes

Mich. Comp. Law § 168.931(1)(f)

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Uber Technologies, Inc. (“Uber”) respectfully moves for leave to file the attached *amicus curiae* brief.

“Classical participation as an amicus to brief and argue as a friend of the court was, and continues to be, a privilege within ‘the sound discretion of the courts.’” *United States v. State of Mich.*, 940 F.2d 143, 165 (6th Cir. 1991) (internal citation omitted). In exercising that discretion, “[a]n *amicus* brief should normally be allowed when . . . the *amicus* has unique information or perspective that can help the Court beyond the help that the lawyers for the parties are able to provide.” *Dow Chem. Co. v. United States*, No. 00-10331-BC, 2002 WL 33012185, at *1 (E.D. Mich. May 24, 2002) (citing *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997)). Uber respectfully requests leave to file the attached *amicus* brief because it offers “unique information [and] perspective,” *id.*, that is both “desirable” and “relevant to the disposition of the case,” Fed. R. App. P. 29(a)(3)(b).

Uber, a leading American technology company, connects the physical and digital worlds, dismantling barriers to movement, transportation, and earnings in Michigan and throughout the United States. Uber is committed to the values of community involvement, public service, and civic engagement. And it actively promotes these values by supporting participation in the democratic process. Uber has engaged in several non-partisan initiatives to make it easier for all voters—

regardless of their location, access to transportation, and political views—to exercise their right to vote. These include partnering with non-partisan organizations to help register tens of thousands of voters, facilitating the delivery of free food to Americans waiting in long lines to cast their vote, and providing free and discounted rides to the polls through its Rides to the Polls Program.

Here, Plaintiffs challenge Section 931(1)(f) of the Michigan Election Laws (the “Voter Transportation Law”), which prohibits the hire of a motor vehicle to transport voters unless they are physically unable to walk. Mich. Comp. Law § 168.931(1)(f). As a ride-sharing platform, Uber’s services in Michigan are directly implicated. In recent election cycles, Uber has supported a number of initiatives to reduce barriers to voting. In the most recent presidential election cycle, for example, Uber broadly marketed its Rides to the Polls Program, where riders could receive 50% off rides to or from polling locations (up to \$7 off each way). But, as explained in the proposed *amicus* brief, Uber did not offer this discount in Michigan, thus underscoring the real-world impact of the Voter Transportation Law’s unconstitutional vagueness. Uber’s proposed brief also explains how the Voter Transportation Law chills Uber’s expression of support for the democratic process and the value of civic participation.

In light of Uber’s position as a ride-sharing platform in Michigan, Uber submits that its proposed *amicus* brief, filed herewith, will offer a unique and

important perspective on the issue presented and provide significant value to the Court in resolving this case.

Pursuant to Local Rule 7.1(a), undersigned has conferred with counsel of record for all parties in this case concerning the nature of this Motion. Plaintiffs consent to the filing of an *amicus* brief by Uber. Defendant Nessel and Intervenor-Defendants Republican National Committee, Michigan Republican Party, Michigan Senate, and Michigan House of Representatives reserve taking a position on this Motion until after the filing of the proposed brief.

CONCLUSION

For the foregoing reasons, the motion for leave to file an *amicus curiae* brief should be granted.

Dated: March 29, 2022

Respectfully submitted,

s/ Aaron M. Lewis

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**Application for Attorney Admission
Forthcoming*

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
STATEMENT OF INTEREST	1
INTRODUCTION	3
BACKGROUND	4
A. Lack of Transportation Is a Substantial Barrier to Exercising the Right to Vote.	4
B. Uber’s Rides to the Polls Program Was Designed to, and Did, Reduce Transportation Barriers and Increase Poll Access, Thereby Facilitating Political Participation.	8
ARGUMENT	11
I. Uncertainty Regarding the Meaning and Application of the Voter Transportation Law Limits Uber’s Ability to Reduce Barriers to Voting in Michigan.....	11
A. It is Unclear if the Voter Transportation Law Bars Uber from Offering Discounts for Rides to the Polls.	12
B. The Vagueness of the Voter Transportation Law Hampers the Ability of Any Individual or Political Organization to Request Transportation to the Polls via Uber’s App.....	15
II. To the Extent the Voter Transportation Law Bars Uber’s Rides to the Polls Program, It Chills Uber’s First Amendment Right To Effectuate Its Expressive Interests in Promoting Civil Participation.	17
CONCLUSION.....	20

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>City of Seattle v. Trump</i> , No. 17-497-RAJ, 2017 WL 4700144 (W.D. Wash. Oct. 19, 2017).....	13
<i>Green Party of Tennessee v. Hargett</i> , 700 F.3d 816 (6th Cir. 2012)	14
<i>Meyer v. Grant</i> , 486 U.S. 414 (1988).....	19
<i>Priorities USA v. Nessel</i> , 462 F. Supp. 3d 792 (E.D. Mich. 2020)	<i>passim</i>
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964).....	3
<i>Yick v. Hopkins</i> , 118 U.S. 356 (1886).....	3
Statutes	
52 U.S.C. § 10307(c)	13
Mich. Comp. Law § 168.931(1)(f).....	<i>passim</i>
Mich. Comp. Law § 8.31	11
O.C.G.A. § 21-2-570.....	13

STATEMENT OF INTEREST

Uber Technologies, Inc. is an American technology company. In Michigan, Uber's lead generation platform has helped connect millions of individual riders to needed transportation and provided earnings opportunities for tens of thousands of drivers.¹

Uber connects the physical and digital worlds, dismantling barriers to movement, transportation, and earnings. Accordingly, Uber supports values such as community involvement, public service, and civic engagement. One of the ways that Uber promotes these values is by supporting democratic participation. Uber supports non-partisan initiatives that make it easier for all voters—regardless of their location, access to transportation, and political views—to exercise their civic responsibility. In recent election cycles, for example, Uber has partnered with non-partisan organizations to facilitate the delivery of free food to Americans waiting in long lines to cast their vote, helped register tens of thousands of voters, and assisted riders in getting to the polls through its Rides to the Polls Program—whereby riders could identify their polling location in the Uber app and take a free or discounted ride to their polling location. Uber has implemented its Rides to the

¹ *Amicus curiae* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus curiae* or its counsel made any monetary contributions intended to fund the preparation or submission of this brief.

Polls Program to help eliminate transportation barriers in voting and to help ensure that every eligible American can access the polls.

But in the last presidential election cycle, which featured unprecedented turnout, Michigan voters could not benefit from this program. Under the Michigan law at issue in this litigation, it is a misdemeanor to “hire a motor vehicle” to transport voters to the polls unless those voters are “physically unable to walk.” Mich. Comp. Law § 168.931(1)(f). Due to the law’s vagueness and uncertainty about the scope of Section 931(1)(f) (hereinafter, the “Voter Transportation Law”), including that it could potentially apply to offering a discount on a ride in a hired motor vehicle, Uber did not operate its Ride to the Polls Program in Michigan. As a result, Michigan citizens were unable to receive discounted rides to the polls through Uber.²

Not only does Michigan’s Voter Transportation Law hinder democracy by making it harder for Michigan citizens to exercise their right to vote, but it impedes Uber’s efforts to support democratic participation and is contrary to Uber’s values of promoting community involvement, public service, and civic engagement.

² See “Our 2020 Get Out The Vote Efforts,” Uber Newsroom, Oct. 5, 2020, *available at* <https://www.uber.com/newsroom/uber-announces-2020-get-out-the-vote-effort/>.

INTRODUCTION

The right to vote is sacred in our American democracy. “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). “Other rights, even the most basic, are illusory if the right to vote is undermined.” *Id.* Voting is the right that is “preservative of all rights.” *Yick v. Hopkins*, 118 U.S. 356, 370 (1886).

Access to transportation is crucial to exercising the right to vote. In the 2016 Survey of the Performance of American Elections, 30% of people who did not vote in prior elections cited transportation as a factor in their non-participation.³ Uber, a technology company focused on making movement more accessible, is uniquely positioned to help address this barrier to voting. Uber has attempted to assist eligible Americans wishing to exercise their civic responsibility through its Rides to the Polls Program.

Michigan’s Voter Transportation Law, however, threatens to undermine that fundamental right in the State of Michigan by making it illegal to “hire a motor vehicle” to transport voters to the polls unless those voters are “physically unable to walk.” Mich. Comp. Law § 168.931(1)(f). What it means to “hire a motor vehicle”

³ Stewart, C., 2016 Survey of the Performance of American Elections (2017), Final Report at 33, 42 & Appendix 1, available at <https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/Y38VIQ>.

is vague, leaving Uber unable to determine with certainty whether it, or its users, would be subject to criminal liability under the Voter Transportation Law. As a result, Uber did not operate its Rides to the Polls Program in Michigan in the last presidential election cycle and remains uncertain if it can offer this program in future elections.⁴ Accordingly, the Voter Transportation Law has interfered with Uber's business operations, disrupted Uber's efforts to play its part in reducing transportation barriers to voting in Michigan, chilled Uber's expressive interests in promoting civic participation, and hampered Uber's efforts to meaningfully engage with its users.

In light of those restrictions, Uber stands for its communities, employees, partners, and customers, in asking the Court to protect the right to vote.

BACKGROUND

A. Lack of Transportation Is a Substantial Barrier to Exercising the Right to Vote.

Uber's Ride to the Polls Program is an important and effective facet of its larger commitment to strengthening civic engagement on a non-partisan basis. Uber has remained steadfast to that commitment in light of recent evidence that transportation barriers represent a significant factor affecting poll access. For example, a 2016 national survey of voters and non-voters found that transportation

⁴ See *supra* n.2 (highlighting Uber's efforts to increase voter participation).

was the fourth most common reason individuals failed to vote in the 2016 general election.⁵ And of the 40% of non-voters in 2016, 14% identified transportation problems as a *major* factor in their failure to vote.⁶ That same survey also explained that transportation challenges played an outsized role in Michigan, with 23% of non-voters in Michigan identifying transportation issues as a major factor that prevented them from voting—more than 1.5 times the national average.⁷

More specific research has shown that direct access to a vehicle has a significant effect on election day voter turnout, including when controlling for demographic characteristics and other factors.⁸ This research, based on an analysis of Michigan voting and car ownership data, demonstrated that only 36% of non-car owners voted in the 2018 general election, as compared to 66% of those with a car.⁹ It also showed that access to cars remained a significant factor affecting voter turnout

⁵ *Supra* n.3 at 42, Appendix 1 (noting that transportation problems were a factor for 30.8% of non-voters).

⁶ *Id.* at 33, Table III-3.

⁷ *Compare id.* at 33, Table III-3 *with id.* at Appendix 4, Reason for not voting: Transportation problems.

⁸ *See* De Benedictis-Kessner, J., & Palmer, M., Driving turnout: The effect of car ownership on electoral participation, *Political Science Research and Methods* (2021), at 1–9. doi:10.1017/psrm.2021.67, available at <https://www.cambridge.org/core/journals/political-science-research-and-methods/article/abs/driving-turnout-the-effect-of-car-ownership-on-electoral-participation/EEDC65379EC00316B768986D75D691D2>.

⁹ *Id.* at 3. A similar effect was demonstrated for the 2018 primary elections, where the turnout gap between those with access to a car and those without was 19%. *Id.* at 4, Figure 1.

after controlling for both demographic characteristics (*e.g.*, gender, race, age, etc.), as well as unobservable characteristics related to geographical variations in turnout (*e.g.*, neighborhood income levels).¹⁰ This effect of car accessibility on election turnout was similarly corroborated for both the 2016 and 2020 elections.¹¹

These transportation barriers are often exacerbated for certain groups of individuals. For example, rates of car accessibility have been shown to be higher for white voters as compared to voters of color.¹² Moreover, at least one study focusing on the 2020 election indicated that individuals with disabilities are 20% less likely than those without disabilities to own a car they can drive, and 10% less likely to have access to a vehicle within their family.¹³ For those individuals, their disabilities are not limited to being “physically unable to walk,” which is the only disability for which the Michigan Voter Transportation Law expressly includes an exemption. As the 2020 study demonstrated, more individuals suffered from cognitive, hearing, and vision impairments (54%), than those with mobility impairments (48%),¹⁴ and voting barriers were most common for those with vision

¹⁰ *Id.* at 4–6, Table 1.

¹¹ *Id.* at A-2 & Table A1; A-3–A-4 & Table A2.

¹² *Id.* at 4, n.4 & Appendix I.

¹³ *See*, Schur, L., & Kruse, D., Disability and Voting Accessibility in the 2020 Elections, Report to the Election Assistance Commission (2021), at 14, *available at* https://www.eac.gov/sites/default/files/voters/Disability_and_voting_accessibility_in_the_2020_elections_final_report_on_survey_results.pdf.

¹⁴ *Id.* at 3.

and cognitive impairments.¹⁵ Indeed, while individuals with disabilities face similar rates of transportation problems as those without disabilities, individuals with vision and cognitive impairments are more likely to encounter transportation problems at a statistically significant level.¹⁶ A lower percentage of individuals with visual impairments (46.6%) reported “never or rarely” having transportation problems, as compared to the percentage of individuals without disabilities (67.2%).¹⁷ And more than half of individuals with visual impairments (53.4%) reported having transportation problems at least “occasionally”—more than 20 percentage points higher than individuals without disabilities (32.9%).¹⁸ Similarly, a larger percentage of individuals with cognitive impairments reported having transportation problems at least “occasionally” (41%) than individuals without disabilities.¹⁹ In other words, a voter’s ability to physically walk is not a determinative factor in whether an individual with a disability will have a meaningful ability to access the polls.²⁰ Thus, as written, the Voter Transportation Law’s narrow exemption for voters who are “physically unable to walk,” Mich. Comp. Laws § 168.931(1)(f), excludes many

¹⁵ *Id.* at 3, 6 & Figure 2.

¹⁶ *Id.* at Table 31.

¹⁷ *Id.*

¹⁸ *Id.* These results were significant at a 99% confidence level.

¹⁹ *Id.* These results were significant at a 95% confidence level.

²⁰ This is particularly true when one considers the distance between a voter and a polling place. Even able-bodied individuals would find a couple-mile walk to a polling place to be a significant transportation barrier.

voters with disabilities who most rely on third-party transportation services, including those provided by Uber's driver customers, in order to access the polls.

B. Uber's Rides to the Polls Program Was Designed to, and Did, Reduce Transportation Barriers and Increase Poll Access, Thereby Facilitating Political Participation.

Uber has been and continues to be dedicated to breaking down transportation barriers and making movement more accessible to more individuals. Uber is proud that its technology and efforts, and the hard work of the thousands of drivers who use Uber's app, have already transformed the ability of millions of people to get around their communities. As part of this mission, and in light of the research affirming the important role transportation plays in increasing voter access, Uber has developed various programs that help eliminate barriers to accessing the polls. Specifically, Uber has: partnered with Google to provide an in-app feature that assisted voters in locating their local polling station and enabled riders to request a ride to their polling location with a single button;²¹ provided in-app voter registration and early voting information to support voter registration efforts across the country;²² supplied meals and drinks for people waiting in long lines at the polls;²³

²¹ "Just a few days to go, have you planned your trip?" Uber Newsroom, Nov. 4, 2016, *available at* <https://www.uber.com/newsroom/vote>.

²² "Uber Drives the Vote," Uber Newsroom, Oct. 4, 2018, *available at* <https://www.uber.com/newsroom/drivethevote/>.

²³ *See supra* n.2

and offered its socially distant Greenlight Hubs (facilities with ample parking where drivers go to troubleshoot issues) to local governments for use as polling locations.²⁴

Most recently, Uber offered discounts on rides to the polls in 2020 in every state except for Michigan and California²⁵—providing riders (including through its bikes and scooters) with a discount of “50% off roundtrip rides to and from the polls (up to \$7 each trip), or up to \$14 for the two trips.”²⁶

In total, and through its various non-partisan partnerships, Uber has helped more than 70,000 individuals register to vote,²⁷ more than 350,000 people request an absentee ballot or find their early voting location,²⁸ more than 80,000 people find their polling location, and helped deliver over 1.3 million snacks at polling places across the country.²⁹ Uber has also helped recruit approximately 2,800 poll

²⁴ *Id.*

²⁵ *See supra* n.2. Uber did not offer this discount in California to avoid any appearance of impropriety given that it publicly advocated for a high-profile California ballot initiative during that election cycle.

²⁶ *Id.* Drivers using the Uber platform are not Uber employees. A rider’s payment for a ride goes directly to a driver, and the driver pays Uber a portion of that payment for access to trip requests via the Uber app. In 2020, Uber’s discount program used a promotion code to provide 50% off rides to and from the polls (up to \$7 off each way). Uber fully accounted for the discount; it did not impact drivers’ earnings. *See id.*

²⁷ Uber partnered with TurboVote to help riders, eaters, drivers, and delivery people register to vote and vote early through the Uber and Uber Eats apps.

²⁸ Uber directed individuals to Vote Early Engine to request an absentee ballot or find their early voting location.

²⁹ Uber partnered with Pizza to the Polls to help deliver food to voters standing in line at polling stations across the county. *See* Kerry Breen, *Pizza to the Polls is using free slices to motivate voters to stay in line*, Today, Oct. 30, 2020, *available at*

workers,³⁰ and has provided educational resources to more than 20,000 listeners through its Get Out The Vote Podcast.³¹

In the last presidential election cycle alone, Uber, through its Rides to the Polls Program, facilitated tens of thousands of rides to the polls on election day,³² representing hundreds of thousands of dollars in discounts. In doing so, Uber's program was particularly effective at helping voters overcome traditional voter access barriers. For example, nationwide, 36% of the discounted poll rides Uber enabled originated in "Communities of Concern" (*i.e.*, a census tract where (i) 50% of households have incomes below 60% of the Area Median Gross Income ("AMGI"), or (ii) there was a poverty rate of 25% or more). And three-quarters of the discounted poll rides were to areas other than heavily populated city-centers. In other words, Uber's Rides to the Polls Program generally helped provide voters with access to polling locations in harder to reach areas.

<https://www.today.com/food/pizza-polls-hopes-free-pizza-will-keep-voters-line-t196771>.

³⁰ As a founding member of Power the Polls, Uber has encouraged people to volunteer as poll workers, and partnered with several organizations including Civic Alliance, National Voter Registration Day, Vote Early Day, and Time to Vote to do so. See Power the Polls Partners, available at <https://www.powerthepolls.org/partners#Uber>.

³¹ "Get Out The Vote With Uber," Uber Podcast, available at <https://soundcloud.com/user-747302251/get-out-the-vote-with-uber>.

³² This figure excludes Michigan, as Uber did not operate its discounted rides program in the state because of the Voter Transportation Law.

ARGUMENT

I. **Uncertainty Regarding the Meaning and Application of the Voter Transportation Law Limits Uber’s Ability to Reduce Barriers to Voting in Michigan.**

As this Court has already recognized, “basic principles of due process set an outer limit for how vague a statutory command can be if a person is going to be expected to comply with that command.” *Priorities USA v. Nessel*, 462 F. Supp. 3d 792, 817 (E.D. Mich. 2020) (internal citations and quotations omitted). Specifically, “a statute is unconstitutionally vague” “if its terms (1) fail to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits or (2) authorize or even encourage arbitrary and discriminatory enforcement.” *Id.* (internal citations and quotations omitted). Michigan’s Voter Transportation Law fails to provide “a reasonable opportunity to understand what conduct” is prohibited. *Id.* Section 931(1)(f) of the Michigan Election Laws prohibits a “person”³³ from “hir[ing] a motor vehicle or other conveyance” “for conveying voters” to an election unless those voters are “physically unable to walk.” Mich. Comp. Laws § 168.931(1)(f). It makes that broad proscription without defining, critically, what it means to “hire a motor vehicle.” *Id.* And it imposes a

³³ Although Michigan Election Law does not define “person,” Mich. Comp. Law § 8.31 provides that “person” “may extend and be applied to bodies politic and corporate, as well as to individuals.”

criminal penalty (a misdemeanor), *id.*—90 days of imprisonment or a \$500 fine, or both—on anyone found guilty of violating the statute, *id.* § 750.504.

In light of the criminal penalty, the vagueness test, as applied here, cannot be “relaxed somewhat.” *Priorities USA*, 462 F. Supp. 3d at 817. To the contrary, a “more stringent . . . test should apply,” as the vagueness of the law threatens to expose Uber to criminal liability and abridge its expression of commitment to the values of civic participation. *Id.*; *see also infra* § II. Uber’s own experience with Michigan’s vague law confirms in real-world terms the legal conclusion that the law is unconstitutionally vague.

A. It is Unclear if the Voter Transportation Law Bars Uber from Offering Discounts for Rides to the Polls.

The plain text of the Voter Transportation Law prohibits the “hire” of any “motor vehicle or other conveyance” for the purpose of “conveying voters” who are physically able to walk. Mich. Comp. Laws § 168.931(1)(f). This vague prohibition does not provide any guidance or definition for the term “hire.” Nor does the statute provide any exemptions to this broad proscription, other than for those who are physically unable to walk. Uber is reasonably concerned that its Rides to the Polls Program, through which Uber provides discounts on a transaction in which a rider requests transportation from an independent driver, could be construed as a prohibited “hire” under the statute.

In her responsive pleadings in this litigation, the Attorney General has stated that “Plaintiffs can spend any amount of money to transport voters to elections so long as the transportation is not a ‘quid pro quo.’” ECF No. 30, PageID.484; *see also* ECF No. 27, PageID.429.³⁴ Uber views that as a reasonable and appropriate approach to the statute.³⁵ The problem is that representations in a litigation filing, however well-intentioned, cannot provide sufficient assurances as to whether and how the law will be enforced against Uber, including by any future Attorney General’s office. *See City of Seattle v. Trump*, No. 17-497-RAJ, 2017 WL 4700144, at *4–*5 (W.D. Wash. Oct. 19, 2017) (rejecting the Department of Justice’s memorandum as binding because it “merely sets forth boundaries—arrived at in response to pending litigation—by which [the Attorney General] intends to enforce the Executive Order”).

³⁴ In her motion to dismiss this case, the Attorney General contended that “[t]he statute does not otherwise prohibit” “free transportation” or “a person from paying for expenses incurred in transporting a voter by vehicle so long as it does not amount to hiring for the service.” ECF No. 27, PageID.425–26. Simply stating that the statute does not prohibit “a person from paying for expenses incurred in transporting a voter by vehicle” *only* if that act does not constitute “hiring for the service,” *id.*, leaves unanswered the question of what constitutes hiring for the service—particularly as it applies to Uber’s discount program.

³⁵ Such a construction of the law would be consistent with laws in other states that prohibit quid pro quo conduct in the context of voting, *see* O.C.G.A. § 21-2-570, and a similar federal law, *see* 52 U.S.C. § 10307(c). Uber’s discounts for rides to the polls do not run afoul of these laws because they are not intended to induce or reward the act of voting, as riders were not required to provide a specific purpose for their trips to receive a discounted trip. *See supra* n.2.

That problem is underscored by the Attorney General’s subsequent suggestion that the law does prohibit ride-sharing companies from offering free and discounted rides to the polls, as well as the State’s Director of Elections’ uncertainty on this point. *Compare* ECF No. 152-18, PageID.3866, at 62:02–62:15 (explaining that the statute “preclude[s] [Uber] from” “providing discounted or free rides to the polls”) *with* ECF No. 152-19, PageID.3894, at 46:19–47:04 (explaining that it was “possible” that the law allows Uber to provide discounted or free rides, “depend[ing] on whether that is [a] hiring”). Ultimately, the positions taken in this litigation do not cure the problem with the text of the statute itself—that it does not “ensure that both those who enforce [the] statute and those who must comply with it ‘know what is prohibited.’” *Green Party of Tennessee v. Hargett*, 700 F.3d 816, 825 (6th Cir. 2012); *see also Priorities USA*, 462 F. Supp. 3d at 817 (“Defendant’s very argument illustrates why plaintiffs have plausibly set forth facts demonstrating the Transportation Law may be unduly vague.”).

In light of the ambiguity of the Voter Transportation Law, Uber has determined that it should not offer its Rides to the Polls Program in Michigan despite election data from 2016 showing that 23% of Michigan voters reported transportation as a “major factor” for not voting—nine percentage points higher than the nationwide average of voters who did not vote for the same reason.³⁶

³⁶ *See supra* n.3 at Appendix 4, Reason for not voting: Transportation problems.

Uber’s challenges in determining whether its Rides to the Polls Program is permitted in Michigan—that a sophisticated business could not “know what is prohibited” by the Voter Transportation Law—adds perspective to the Court’s vagueness analysis here. Notwithstanding the Attorney General’s interpretation in the course of this litigation that the statute should only prohibit the provision of financial assistance with transportation to polling locations that amounts to a “quid pro quo,” ECF No. 27, PageID.429, the indisputable reality is that Uber demonstrated its commitment to offering discounts on rides throughout the country—but did not in Michigan, where the vague text of the law could be interpreted as prohibiting any financial assistance with rides regardless of whether it constitutes a quid pro quo. The point of Due Process protection against vague criminal prohibitions is to avoid such an outcome.

B. The Vagueness of the Voter Transportation Law Hampers the Ability of Any Individual or Political Organization to Request Transportation to the Polls via Uber’s App.

Even apart from Uber’s Rides to the Polls Program, the vagueness of the Voter Transportation Law raises several questions about Uber’s ability to facilitate rides to the polls without directly violating the law or indirectly facilitating violation of the law. The statute could, depending on how it is interpreted, prohibit *any* Uber rider from “hiring” of a motor vehicle or “other conveyance.” But in the modern age of ride-hailing platforms, which enable individuals to request transportation

from independent drivers, it becomes unclear if the rider herself may be criminally liable for arranging an Uber ride (and if Uber, by facilitating the arrangement through its platform, indirectly aided such prohibited conduct).

A simple example makes this clear. Two individuals may decide to carpool to a polling station by requesting a ride via the Uber app. They may desire to reduce costs, ensure sufficient time to cast a ballot before the election deadline, or simply avoid public transportation during a global pandemic. Regardless of their motivations, if one of the carpooling riders pays for the transportation of the other rider (when both are able to walk), did the paying individual “hire” a motor vehicle in violation of the Voter Transportation Law? And if carpooling through the Uber platform constitutes a prohibited “hire,” as just described, did Uber aid and abet the individual’s prohibited hire by simply providing the ride-hailing platform through which the transportation service was arranged? Taken one step further, do non-partisan, get-out-the-vote organizations violate the statute by merely using Uber to request rides-to-the-polls efforts? And similarly, would Uber be criminally liable for entering into partnerships with organizations that arrange rides to the polls? As the Court has already recognized, the Voter Transportation Law does not answer these questions: “It is simply not clear whether [individuals or political organizations] can contract with Uber to transport a voter and claim that [they are]

merely paying for ‘expenses’ associated with transportation.” *Priorities USA*, 462 F. Supp. 3d at 817–18.

II. To the Extent the Voter Transportation Law Bars Uber’s Rides to the Polls Program, It Chills Uber’s First Amendment Right To Effectuate Its Expressive Interests in Promoting Civil Participation.

This Court has already explained that “laws that govern election-related speech and association,” like the one at issue here, “go beyond the mere intersection between voting rights and election administration” and instead “turn toward the area where the First Amendment has its fullest and most urgent application.” *Id.* at 810–11 (internal citations and quotations omitted). Here, too, the Court should take into account the chilling effect of the Voter Transportation Law on Uber’s right to expression under the First Amendment.

Uber’s Rides to the Polls Program reflects not only an ongoing effort to facilitate civic engagement and political participation by individuals, but an affirmative expression of Uber’s own non-partisan commitment to the democratic process and the value of civic participation. Uber’s mission includes the goal of helping people get to their destinations and eliminating transportation barriers. In recent years, that mission has expanded to the democratic process. In response to data showing that at least 14% of eligible voters noted transportation as a barrier to

voting,³⁷ Uber took action. In particular, Uber has facilitated tens of thousands of discounts on rides to the polls, and to date, has helped tens of thousands of individuals register to vote, request an absentee ballot, find their polling locations, and deliver over 1.3 million snacks at polling places across the country. Uber has engaged in these get-out-the-vote efforts based on its core belief that Uber is “uniquely positioned to help move people to the polls” and that “every eligible American citizen should have access to vote.”³⁸ Accordingly, there can be no doubt that Uber’s expression—aimed at encouraging and assisting voters to participate in the political process—constitutes constitutionally protected speech. *See Priorities USA*, 462 F. Supp. 3d at 816–17 (recognizing that “advertisements, get-out-the-vote efforts, and voter registration drives” and “rides-to-the-poll efforts” are “protected political expression”).

The Voter Transportation Law, however, chills Uber’s expression of its interest in promoting civic participation in the democratic process. For example, one interpretation of this vague statute is that it “imposes an unconstitutional \$0 spending limit on transporting voters to the polls.” *Id.* at 816. That possible interpretation, coupled with the threat of criminal prosecution and the State’s refusal to disavow enforcement of the challenged law, has prevented Uber from engaging

³⁷ *Supra* n.3 at 33 (showing that 14% of respondents cited transportation as a “major factor” for not voting in 2016).

³⁸ *Supra* n.2.

in its protected expression through discount offers in Michigan. *See Meyer v. Grant*, 486 U.S. 414, 416 (1988) (striking down a law that made it felony to pay circulators of initiative petitions).

What is more, the law simultaneously chills Uber’s expression while failing to achieve the State’s interest. Here, the Attorney General maintains that the “purpose of the prohibition is to protect voters against undue influence” and to prevent “‘quid pro quo’ arrangements.” ECF No. 27, PageID.429. Yet at the same time, the statute might be enforced in a manner that “bans any hired transportation to the polls even if the ride is *unrelated* to support for a particular candidate or issue,” *Priorities USA*, 462 F. Supp. 3d at 819 (emphasis added)—as Uber’s discount program emphatically is.

Indeed, the law is not only over-inclusive in its restrictions but under-inclusive in its protections. The law grants an express exemption to the ban on hiring a vehicle if the voter is “physically unable to walk,” presumably on the basis that those who are physically disabled may need help getting to the polls. Mich. Comp. Law § 168.931(1)(f). That exemption, however, critically ignores voters with disabilities who are able to walk but may nonetheless need third-party transportation services.

In sum, Michigan’s Voter Transportation Law fails to achieve the State’s interest in preventing quid pro quo transportations while chilling Uber’s free speech rights. On this basis, as well, the Court should strike down Michigan’s improperly

tailored statute. *See Priorities USA*, 462 F. Supp. 3d at 818 (explaining that under “exacting scrutiny,” the Voter Transportation Law must “bear[] a substantial relationship to a sufficiently important governmental interest”).

CONCLUSION

Uber remains committed to encouraging civic participation in the democratic process and ensuring that all voters can equitably access the polls. For the foregoing reasons, Michigan’s Voter Transportation Law impedes not only the democratic process but also Uber’s ability to meaningfully reduce transportation barriers to voting. Uber respectfully requests that the Court enjoin the enforcement of Michigan’s Voter Transportation Law.

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Dated: March 29, 2022

Respectfully submitted,

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**Application for Attorney Admission
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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2022, I electronically filed the above document with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

LOCAL RULE CERTIFICATION

I, Aaron M. Lewis, certify that the above document complies with Local Rule 5.1(a), including: double spacing (except for quoted materials and footnotes); at least one-inch margins; consecutive page numbering; and type size of all text and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 point (for proportional fonts). I also certify that the brief is the appropriate length pursuant to Local Rule 7.1(d)(3).

Dated: March 29, 2022

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