

ARIZONA SUPREME COURT

STATE OF ARIZONA, *ex rel.*
MARK BRNOVICH, Attorney General,

Petitioner,

v.

CITY OF PHOENIX, Arizona,

Respondent.

Case No.:

**MOTION FOR
INTERLOCUTORY STAY
ENJOINING § 4–78 OF CITY OF
PHOENIX ORDINANCE G–6650
PENDING RESOLUTION OF
PETITION FOR SPECIAL
ACTION**

Petitioner, State of Arizona *ex rel.* Mark Brnovich, Attorney General, moves this Court to issue an order enjoining the City of Phoenix (“City”) from enforcing or giving any effect to § 4–78 of Ordinance G–6650 (“Ordinance”), pending resolution of the Attorney General’s Petition for Special Action, filed today. *See* Ariz. R. Proc. Spec. Act. 5 (providing that this Court may grant interlocutory relief “in the same manner” in which preliminary injunctions are granted under Rule 65 of the Arizona Rules of Civil Procedure); *Cf.* ARCAP 7(c) (“An appellate court ... may enter any order appropriate to preserve the status quo[.]”).

I. Introduction

The City of Phoenix (“City”) exceeded its constitutional authority on December 18, 2019, when it adopted the Ordinance, which is scheduled to take effect on **February 1, 2020**. *See* Petition for Special Action Appendix (“Pet. App.”) A at 33. As discussed below, and in the Attorney General’s simultaneously-

filed Petition for Special Action, § 4–78 of the Ordinance imposes and increases “trip fees” on commercial ground transportation companies that provide trips to and from the Phoenix Sky Harbor Airport (“Airport”) in violation of the plain language of article IX, § 25 of the Arizona Constitution.

The Attorney General requests this Court to grant preliminary injunctive relief to prohibit the City from enforcing or giving any effect to § 4–78 of the Ordinance, pending this Court’s resolution of the Petition for Special Action. *See Board of Regents v. City of Tempe*, 88 Ariz. 299, 302 (1960) (recognizing this Court “has on several occasions held an injunction to be a proper remedy where it is alleged that the statute is invalid or being applied in an unauthorized manner”); *McCluskey v. Sparks*, 80 Ariz. 15, 20–21 (1955) (holding injunction was appropriate where plaintiffs did not seek “to enjoin the assessor from assessing their property or the board of equalization from equalizing the same in accordance with the statutes applicable thereto,” but instead sought “to require these officials to comply with the statutes and constitutions of Arizona and of the United States”); *Boruch v. State ex rel. Halikowski*, 242 Ariz. 611, 616, ¶ 16 (App. 2017) (noting that courts are not prevented “from granting injunctive relief when a public officer enforces a public statute in a manner that exceeds the officer’s power”).

Here, as the Attorney General argues in the Petition for Special Action, the City exceeded its constitutional power granted to it under article XIII, § 2 (the

“home rule charter” provision) when it adopted the Ordinance imposing new “trip fees” in violation of article IX, § 25 of the Arizona Constitution. The Ordinance is invalid on its face as a violation of the Arizona Constitution, and the legal standards for injunctive relief under Rule 5 are satisfied.¹

II. Background

The Ordinance at issue in this action imposes and increases new “trip fees” on commercial ground transportation companies that pick-up and drop-off passengers at the Airport. *See generally* Petition for Special Action (“Pet.”).

As relevant here, the Ordinance increases one type of “trip fee” (“pick-up” fee) and establishes an entirely new type of “trip fee” (“drop-off” fee) that companies, i.e., “authorized provider[s],” must pay. *See* Pet. App. A at 25–26. Under Chapter 4, Article IV, § 4–67 of the Phoenix City Code (“City Code”), a “transportation network company” (“TNC”) is an “authorized provider” that is required to pay “trip fees.” *See* Pet. App. B at 1–4 (defining “authorized provider”

¹ In light of this Court’s precedent granting injunctive relief in similar circumstances, the City cannot argue that A.R.S. § 12–1802(7) prohibits the relief the Attorney General seeks. Section 12–1802(7) prohibits an injunction “[t]o prevent a legislative act by a municipal corporation.” A.R.S. § 12–1802(7). But §12–1802(7) applies only when the movant does not challenge a municipal corporation’s power to adopt the “legislative act” in the first place. *See, e.g., Boruch*, 242 Ariz. at 617–19, ¶¶ 10–35 (reasoning subsections (4) and (6) of A.R.S. § 12–1802 could not be invoked where “the requesting party is seeking to enjoin conduct that goes beyond the officer’s statutory power”). Here, it is the Attorney General’s position that the City has exceeded the scope of its constitutional authority; thus, injunctive relief is appropriate.

and “transportation network company”). TNCs are more commonly known as ridesharing companies. *See* Wikipedia, *Ridesharing company* (“A ridesharing company (also known as a [TNC] or a mobility service provider) is a company that matches passengers with vehicles, via websites and mobile apps.”)²; *Loewen v. Lyft, Inc.*, 129 F. Supp. 3d 945, 949 (N.D. Cal. 2015) (describing Lyft as a “transportation network company that facilitates peer-to-peer ridesharing through its mobile-phone application (the ‘Lyft app’) by connecting passengers who need a ride to drivers who have a car”).

Phoenix, the largest city in Arizona, is home to over 1.6 million people, making it the 6th most populous city in the United States.³ The Airport “has a \$106 million daily economic impact” with about 120,000 passengers arriving and departing on a typical day.⁴

Since 2016, two rideshare companies—Uber and Lyft—have provided transportation services to and from the Airport. *See* Patrick O’Grady, *Uber, Lyft get access to Sky Harbor Airport*, Phoenix Business Journal (Mar. 1, 2016)

² https://en.wikipedia.org/wiki/Ridesharing_company (last visited January 21, 2020).

³ *Phoenix Population*, <http://worldpopulationreview.com/us-cities/phoenix-population/> (Oct. 29, 2019) (last visited January 21, 2020).

⁴ *Airport Facts*, <https://www.skyharbor.com/About/Information/EconomicImpact> (last visited Jan. 20, 2020).

“Passengers at [the] Airport will now have the option of using Uber and Lyft for a ride. The Phoenix City Council voted 5–4 Tuesday to make changes to the transportation policy of the airport that would allow ride-sharing companies access.”⁵; Dawn Gilbertson, *Uber, Lyft start Phoenix airport pick-ups on Saturday*, The Arizona Republic (Jun. 17, 2016) (“Travelers who need a ride from [the] Airport have a new option beginning Saturday: ride-hailing services Uber and Lyft.”).⁶

Today, ridesharing companies like Uber and Lyft account for about 70%–80% of the commercial ground transportation traffic at the Airport. *See* Phoenix Sky Harbor International Airport Press Release (Dec. 18, 2019) (“When rideshare operators began in June of 2016, they represented only 9.3% of the commercial business. Today they represent 70% of the commercial traffic.”)⁷; Garrett Archer, *What will be the real impact if Uber and Lyft stop trips to Sky Harbor over increased fees?*, ABC 15 Arizona (Jan. 10, 2020) (“A city spokeswoman recently

⁵ <https://www.bizjournals.com/phoenix/blog/business/2016/03/uber-lyft-get-access-to-sky-harbor-airport.html>

⁶ <https://www.usatoday.com/story/travel/flights/todayinthesky/2016/06/17/uber-lyft-start-phoenix-airport-pick-ups-saturday/86047386/>

⁷ <https://www.skyharbor.com/media/PressReleases/2019/12/18/phoenix-city-council-approves-airport-ground-transportation-changes>

acknowledged that rideshare companies are 80 percent of all commercial ground traffic at the airport.”).⁸

On October 16, 2019, the Phoenix City Council, by a 7-2 vote, attempted to approve an ordinance increasing the amount of “trip fees” that are charged to commercial ground transportation providers providing trips to and from the Airport, but the vote was ineffective because of a clerical error. *See* Melissa Yeager, *Clerical error forces Phoenix City Council to vote again on Sky Harbor Uber and Lyft fee*, Arizona Republic (Oct. 22, 2019).⁹ The City reposted the proposal and announced its intention to take another vote on the increased fees at a meeting on December 18, 2019. *See id.*

Leading up to the second meeting, Uber and Lyft made public statements indicating that they would discontinue ground transportation services at the Airport if the City moved forward with the increased “trip fees.” *See* Steven Hsieh, *Everything You Need to Know About the Sky Harbor Uber/Lyft Controversy*, Phoenix New Times (Dec. 6, 2019) (“Lyft made a splash in November when it threatened to cease operations at Phoenix Sky Harbor International Airport over a

⁸ <https://www.abc15.com/news/region-phoenix-metro/central-phoenix/what-will-be-the-real-impact-if-uber-and-lyft-stop-trips-to-sky-harbor-over-increased-fees>

⁹ <https://www.azcentral.com/story/news/local/phoenix/2019/10/22/error-forces-new-vote-phoenix-airport-uber-lyft-fee-increase/2452033001/>

proposed rate hike for airport pickups and drop-offs.”)¹⁰; Melissa Yeager, *Uber Threatens to Leave Sky Harbor Over Proposed Fee Increase*, Arizona Republic (Dec. 13, 2019) (“Uber says it has sent a letter to Phoenix Sky Harbor International Airport’s director of aviation, Phoenix Mayor Kate Gallego and the Phoenix City Council saying that it will leave the airport in January if a proposal to raise ride-share fees to \$4 per trip is approved.”).¹¹ In its letter, Uber advised the City that “[i]n the third quarter of 2019, nearly 18% of all Uber trips to or from [the] Airport began or ended in low-income communities.” *See* Yeager, *supra*.

At the City Council meeting on December 18, 2019, an Uber representative advised that Uber intended to “cease operations at Sky Harbor in January if this proposal is approved.”¹² By a 7-2 vote, the City Council approved the Ordinance, which is scheduled to take effect on February 1, 2020. Pet. App. A at 33; Pet. App. D.

The very next day, Representative Nancy Barto submitted a request to the Attorney General’s Office for legal review of the Ordinance pursuant to A.R.S.

¹⁰ <https://www.phoenixnewtimes.com/news/uber-lyft-ride-share-phoenix-airport-sky-harbor-fees-taxis-explainer-11402951>

¹¹ <https://www.azcentral.com/story/travel/airlines/2019/12/13/uber-threatens-leave-phoenix-sky-harbor-over-proposed-fee-increase/2642680001/>

¹² *See* https://www.youtube.com/watch?v=t6J2jN_ZYQ4 at minute 24:40 (last visited on January 20, 2020).

§41–194.01, identifying the Ordinance’s imposition and increase of “trip fees” as a violation of article IX, § 25 of the Arizona Constitution. The Attorney General’s Office commenced an investigation, soliciting public records and a written response on legal and factual issues from the City.¹³

While the Attorney General’s Office investigated the constitutionality of the increased “trip fees,” Uber and Lyft stood their ground, maintaining that they would discontinue transportation services to and from the Airport if the Ordinance went into effect. *See Anita Snow, Uber and Lyft say they’ll no longer serve the Phoenix airport after the city voted to raise fees by \$1.34*, Business Insider (Dec. 20, 2019)¹⁴; *Melissa Yeager, Sky Harbor Airport’s Uber/Lyft fee increase just passed — again. Here’s what you’ll pay*, Arizona Republic (Dec. 18, 2019) (“Uber and Lyft said they are prepared to leave Sky Harbor International Airport after the Phoenix City Council voted 7 to 2 on Wednesday to approve an increase in ride-share fees . . .”)¹⁵; 12 News, *Uber plans to cease operations at Phoenix Sky Harbor*

¹³ The request (Request No. 19–002), the City’s response, and the Attorney General’s Report issued on January 16, 2020, are available at <https://www.azag.gov/complaints/sb1487-investigations>.

¹⁴ <https://www.businessinsider.com/uber-lyft-to-stop-phoenix-airport-trips-over-higher-fees-2019-12>

¹⁵ <https://www.azcentral.com/story/news/local/phoenix/2019/12/18/uber-lyft-fee-increase-at-sky-harbor-airport-companies-threaten-to-leave/2641394001/>

Airport after fee hike (Dec. 22, 2019)¹⁶; Matt Galka, *Underground ridesharing may increase if Uber, Lyft pull out of Sky Harbor*, Fox 10 (Dec. 30, 2019) (“With just a few weeks left remaining, before Uber and Lyft are expected to stop operating out at Sky Harbor, some are concerned about the possibility of black market ride sharing.”).¹⁷

On January 16, 2020, the Attorney General’s Office issued its statutorily-prescribed report, which concluded that, under a plain-language analysis of the Ordinance and article IX, § 25 of the Arizona Constitution, the Ordinance “very likely” violates the Constitution. The City maintains, however, that the increased “trip fees” are constitutional. See Mackenzie Concepcion, *Arizona attorney general says Phoenix rideshare fees ‘very likely’ violate state constitution*, 12 News (Jan. 16, 2020) (stating that a City spokesperson said that the City “stands by its ordinance and legal position”).¹⁸

¹⁶ <https://www.12news.com/article/news/local/valley/uber-plans-to-cess-operations-at-phoenix-sky-harbor-airport-after-fee-hike/75-04006243-95c7-43eb-a862-ab2a10ba66ee>

¹⁷ <https://www.fox10phoenix.com/news/underground-ridesharing-may-increase-if-uber-lyft-pull-out-of-sky-harbor>

¹⁸ <https://www.12news.com/article/news/local/arizona/arizona-attorney-general-says-phoenix-rideshare-fees-very-likely-violate-state-constitution/75-8ee20e22-abac-4e3b-82f8-cbb6f050f359>

III. An Order Enjoining the City From Enforcing Or Giving Any Effect To § 4–78 of the Ordinance Is Warranted

The Attorney General respectfully requests this Court to issue an order prohibiting the City from enforcing or giving any effect to § 4–78 of the Ordinance, pending this Court’s resolution of the Petition for Special Action. A party seeking injunctive relief on appeal must establish the following factors, which are evaluated on a sliding scale: (1) “a strong likelihood of success on the merits;” (2) “irreparable harm if the stay is not granted;” (3) “that the harm to the requesting party outweighs the harm to the party opposing the stay;” and (4) “that public policy favors the granting of the stay.” *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, 410–11, ¶ 10 (2006); *see also Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990) (establishing standard for granting preliminary injunctive relief). Accordingly, a stay is warranted when “the moving party [] establish[es] either 1) probable success on the merits and the possibility of irreparable injury; or 2) the presence of serious questions and [that] ‘the balance of hardships tip[s] sharply’” in the moving party’s favor. *Smith*, 212 Ariz. at 411, ¶ 10 (citation omitted).

“Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents.” *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017). The purpose of interim relief “is not to conclusively determine

the rights of the parties, but to balance the equities as the litigation moves forward.” *Id.* (internal citation omitted). Courts “must also ‘conside[r] ... the overall public interest’” in awarding a preliminary injunction. *Id.* (quoting *Winter v. Nat. Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008)). These considerations weigh in favor of an order enjoining the City from enforcing or giving any effect to § 4–78 of the Ordinance during the pendency of this action.

A. The Attorney General Has A Strong Likelihood Of Success On The Merits

First, the Attorney General has a “strong likelihood of success on the merits” of the Petition for Special Action. *See Smith*, 212 Ariz. at 410–11, ¶ 10. The Petition alleges that § 4–78 of the Ordinance violates article IX, § 25 of the Arizona Constitution—a recent constitutional amendment that voters passed in 2018 through an initiative measure, Proposition 126 (“Prop 126”). Section 25 states, in relevant part, that “any ... city ... created by law with authority to impose any tax, fee, ... or other assessment, shall not impose or increase any ... transaction-based ... fee ... on the privilege to engage in ... any service performed in this state.” ARIZ. CONST. art. IX, § 25. Taxes, fees, and other assessments that were already in effect on December 31, 2017, are not subject to this prohibition. *See id.*

Here, as discussed in the Petition, the imposition of new “drop-off fees” and the increase of existing “trip fees” (which the Ordinance relabels as “pick-up fees”)

violates the unambiguous text of § 25. The City is vested with the authority to impose the types of taxes, fees, and assessments to which § 25 is directed; the Ordinance imposes *and* increases a “fee” within the meaning of § 25; and the “trip fees” at issue are “transaction-based” on a “privilege” to engage in a “service” within the meaning of § 25. *See* Pet. at 13–20. And even assuming any part of article IX, § 25 is ambiguous, the history and purpose of § 25 show that § 4–78 of the Ordinance is still unconstitutional because Arizona voters intended for the constitutional prohibition against new or increased fees to apply broadly to many services that Arizonans use—including transportation services. *See id.* at 20–24.

In the City’s 19-page letter to the Attorney General’s Office defending the constitutionality of § 4–78, the City argued, *inter alia*, that: (1) the Ordinance does not conflict with article IX, § 25 because “the Ordinance sets fees for ridesharing companies to access and use the City-owned, City-managed Airport”; and (2) article IX, § 25 does not “bar municipalities from conditioning access to their property on the payment of such fees.” Response at 2. But the Ordinance does not impose “trip fees” on TNCs for using and accessing Airport curb space. Rather, it charges “trip fees” related to when a “transaction” occurs, and the “trip fees” are imposed on a “privilege” of engaging in commercial ground transportation services at the Airport. *See* Pet. at 16–20.

Moreover, the City’s letter suggests that its power to manage its property and engage in business itself overrides the express provisions of article IX, § 25. *See* Response at 2–5. This argument lacks merit because, as discussed in the Attorney General’s Petition, Prop 126 also amended the “home rule charter” provision of the Arizona Constitution to expressly state that “[n]otwithstanding any provision of this section to the contrary, no charter shall provide a city with any power to violate article IX, section 25, which preempts such power.” ARIZ. CONST. art. XIII, § 2. This is additional evidence of the voters’ intent to deprive charter cities of any “power” to violate the constitutional prohibition against new and increased transaction-based fees on services. *See* Pet. at 25–26.

Ultimately, this Court will “resolve the [constitutional] issue” presented in the Attorney General’s Petition, in accordance with A.R.S. § 41–194.01(B)(2). *See State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588, ¶ 22 (2017) (noting A.R.S. § 41–194.01(B)(2) “compels” this Court to “resolve the issue” when the Attorney General concludes that a local ordinance “may violate” state law). Nonetheless, the Attorney General has demonstrated “probable success on the merits” or “the presence of serious questions” at this stage of the proceedings to warrant a preliminary injunction. *See Smith*, 212 Ariz. at 411, ¶ 10.

B. The State Will Suffer Irreparable Harm If The City Is Not Enjoined From Enforcing Its Unconstitutional Ordinance

Second, Arizona residents, and the Phoenix economy at large, will suffer “irreparable harm” if the City is not prohibited from enforcing or giving any effect to § 4–78 of the Ordinance. *See Smith*, 212 Ariz. at 410–11, ¶ 10.

The Airport is one of the busiest airports in the country, with about 120,000 passengers arriving and departing on a typical day. *See Andrew Mwaniki, The Busiest Airports in The US*, World Atlas (Dec. 6, 2018) (reflecting that in 2018, the Airport ranked as the 13th “busiest airport” in the nation).¹⁹ The Airport has also been recognized as “one of the busiest tourism and business travel hubs in the nation” and was listed in a Wall Street Journal index as “the third-best in the nation in a study [that] graded major U.S. airports on reliability, value and convenience.” Brendon Kleen, *Phoenix Sky Harbor named third-best big airport in the country*, Phoenix Business Journal (Nov. 14, 2018).²⁰

As discussed above (*supra*, Section II), rideshare services provided by companies like Uber and Lyft account for 70–80% of the commercial ground transportation traffic at the Airport. If Uber and Lyft ceased transportation services

¹⁹ <https://www.worldatlas.com/articles/busiest-airports-in-united-states.html>

²⁰ <https://www.bizjournals.com/phoenix/news/2018/11/14/phoenix-sky-harbor-third-best-big-airport.html>

at the Airport in light of the increased “trip fees” that will take effect on February 1, 2020, the consequences would be drastic for Arizona residents.

Indeed, the City has already anticipated what might happen “[i]f Uber and Lyft were to cease operations” at the Airport. *See* Exhibit 1 to this Motion (“TNC Pull-out Scenario”). The City estimates that “there would likely be an increase in the number of parking transactions at the [A]irport and surrounding parking facilities, *as well as a substantial increase in taxi trips as passengers revert to earlier transportation modes and behaviors.*” *See id.* (emphasis added). This “substantial increase,” however, could be as much as **500%**. *See* Archer, *What will be the real impact if Uber and Lyft stop trips to Sky Harbor over increased fees?*, ABC 15 Arizona (Jan. 10, 2020) (“If the taxi companies are expected to fill the gap that will be left when rideshare companies pull out, they will have to increase capacity by 500 percent.”).²¹

It is unlikely that the taxi companies currently operating at the Airport will have the capacity to handle such an increase. This is particularly so, given that SuperShuttle—another company that provides commercial ground transportation services at the Airport—recently announced that it has ceased operations at the Airport. *See* Patrick O’Grady, *SuperShuttle to shut down Phoenix airport service*

²¹ <https://www.abc15.com/news/region-phoenix-metro/central-phoenix/what-will-be-the-real-impact-if-uber-and-lyft-stop-trips-to-sky-harbor-over-increased-fees>

at year's end, Phoenix Business Journal (Dec. 13, 2019) (“the company said it would cease operations of both SuperShuttle and ExecuCar at the end of this year”).²²

And even assuming the taxis could fill the Uber/Lyft gap, many passengers may elect not to take taxis to their destinations in light of the substantial cost increase. See Archer, *supra* (explaining that the same route from an address in Gilbert, Arizona, to the Airport was \$23 through the Uber app, but \$56 for a taxi trip). This, in turn, could result in more passengers relying on family members or friends for airport rides. Other passengers who are unable to rely on others may find themselves stranded or forced to rely on limited and relatively-expensive options.²³

The public is also likely to suffer another form of irreparable injury: an increase in “black market ridesharing” to replace the legal services offered by Uber and Lyft. See Matt Galka, *Underground ridesharing may increase if Uber, Lyft pull out of Sky Harbor*, Fox 10 Phoenix (Dec. 30, 2019) (explaining that “an

²² <https://www.bizjournals.com/phoenix/news/2019/12/13/supershuttle-to-shut-down-phoenix-airportservice.html>

²³ Notably, the Ordinance’s effective date of February 1, 2020 coincides with the Waste Management Phoenix Open held in Scottsdale—“the best-attended golf tournament in the world with more than 700,000 fans in attendance.” See <https://tpc.com/scottsdale/waste-management-phoenix-open/> (“In 2020 the tournament will start on Monday, January 27th and end on Sunday, February 2nd.”) (last visited on January 20, 2020).

underground market for rideshare” is one where “[u]nlicensed and unregulated drivers could pull up to the gate, offer a cash ride and a customer seeking convenience would most likely pay to be on their way,” and summarizing the risks involved)²⁴; Joey Carrera, *Rideshare drivers offering black market rides at Phoenix Sky Harbor*, azfamily.com (Dec. 17, 2019).²⁵

These possibilities collectively show that “incredible traffic congestion” at the Airport is likely, which has been found to support a finding of irreparable harm. *See New York v. Shinnecock Indian Nation*, 280 F. Supp. 2d 1, 4–5 (E.D.N.Y. 2003) (finding irreparable harm resulting from construction of a gambling casino where “[t]he local roads in the area are not sufficient to handle the present traffic congestion, much less the number of vehicles estimated to travel to the proposed gambling facility”).

Finally, “irreparable injury is suffered when monetary damages are difficult to ascertain or are inadequate.” *Danielson v. Local*, 479 F.2d 1033, 1037 (2d Cir. 1973). If Lyft and Uber discontinue services at the Airport, and the Attorney General ultimately succeeds on the merits in this action, Arizona residents will be deprived of cost-effective ridesharing services while this action is pending.

²⁴ <https://www.fox10phoenix.com/news/underground-ridesharing-may-increase-if-uber-lyft-pull-out-of-sky-harbor>

²⁵ https://www.azfamily.com/news/rideshare-drivers-offering-black-market-rides-at-phoenix-sky-harbor/article_f61dd0de-2152-11ea-9fce-4392b18ef0cb.html

Residents and tourists are also likely to encounter safety issues, given the concerns about black market ridesharing. There is no way to calculate the nature of these damages, nor any way for the public to recoup their costs associated with having to rely on previous modes of transportation that existed before rideshare companies were permitted at the Airport. Because no “corrective relief” will be available later, the injury is irreparable. *See Sampson v. Murray*, 415 U.S. 61, 90 (1974) (explaining that an injury is not irreparable if there is a “possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation”). Thus, the “irreparable harm” prong weighs in favor of injunctive relief to prohibit the City from enforcing or giving any effect to § 4–78 of the Ordinance.

C. The Balance Of Equities And Public Interest Prongs Weigh In Favor Of A Preliminary Injunction

Finally, the balance of equities and public interest (“public policy”) prongs demonstrate that preliminary injunctive relief is necessary. *See Smith*, 212 Ariz. at 410–11, ¶10. When, as here, the government is a party, the balance of equities and public interest prongs merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

These factors favor an order enjoining the City from enforcing the unconstitutional “trip fees” that violate article IX, § 25 of the Arizona Constitution. Notably, the City can still collect “trip fees” from authorized providers that operate

at the Airport under § 4–78 of its current City Code because article IX, §25’s prohibition does not apply to fees that were in effect as of December 31, 2017. *See* ARIZ. CONST. art. IX, § 25. Here, the current “trip fees” provision in §4–78 of the City Code took effect on June 17, 2016. *See* Pet. App. B at 32. The City is therefore allowed to collect “trip fees” in 2020 in accordance with § 4–78(A). These facts show that “the harm to the requesting party outweighs the harm to the [City],” *see Smith*, 212 Ariz. at 410–11, ¶ 10, because enjoining § 4–78 of the Ordinance does not affect the City’s ability to collect lawful “trip fees” from TNCs and non-TNC authorized providers.

“As a practical matter, if a plaintiff demonstrates both a likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor the plaintiff.” *American Tel. and Tel. Co. v. Winback and Conserve Program, Inc.*, 42 F.3d 1421, 1427 n.8 (3d Cir. 1994). Here, the Attorney General has demonstrated a likelihood of success on the merits and irreparable injury as explained above. And Article IX, section 25 establishes a constitutional right against increased or newly-imposed transaction-based fees on services. Protecting constitutional rights is always in the public interest. *See Am. Beverage Ass’n v. City & Cty. of San Francisco*, 916 F.3d 749, 758 (9th Cir. 2019) (finding that protecting commercial speech under the First Amendment was in the public interest and weighed in favor of reversing a denial of preliminary injunction); *G &*

V Lounge, Inc. v. Michigan Liquor Control Comm'n, 23 F.3d 1071, 1079 (6th Cir. 1994) (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.”).

Finally, this Court is statutorily required to give the Attorney General’s Petition for Special Action “precedence over all other cases.” A.R.S. § 41–194.01(B)(2). Given that this action will essentially receive expedited consideration above other cases, the City cannot claim that it will suffer any cognizable harm if it is prohibited from enforcing § 4–78 of the Ordinance while this action is pending.

IV. Conclusion

Based on the foregoing arguments, the Attorney General respectfully requests this Court to issue an order prohibiting the City from enforcing or giving any effect to § 4–78 of the Ordinance, pending this Court’s resolution of the Petition for Special Action.

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RESPECTFULLY SUBMITTED this 21st day of January, 2020.

MARK BRNOVICH

Attorney General

Firm State Bar No. 14000

Brunn W. Roysden III (State Bar No. 28698)

Oramel H. Skinner (State Bar No. 32891)

Linley Wilson (State Bar No. 27040)

Dustin Romney (State Bar No. 034728)

Assistant Attorneys General

2005 N. Central Ave.

Phoenix, AZ 85004

602-542-8958

602-542-4377 (fax)

Beau.Roysden@azag.gov

Linley.Wilson@azag.gov

acl@azag.gov