No. _____

In The
Supreme Court of the United States

MICAH UETRICHT and JOHN KADERBEK,

Petitioners,

v.

CHICAGO PARKING METERS, LLC,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In 2008, for $1.15 billion, the City of Chicago leased its 36,000 parking meters to a private equity firm, Chicago Parking Meters, LLC ("CPM"). The City agreed to double the meter rates, keep the meters in place, and give CPM the exclusive right to retain all the meter revenue for 75 years. The City agreed not to use its reserved powers to interfere with CPM's monopoly profit without paying CPM in full for any lost profit in the 75-year period. CPM has already recovered the entire original investment, plus a sum between $500 million and one billion dollars, with 60 years still to run. Challenging the monopoly under Sections 1 and 2 of the Sherman Act, Plaintiffs, who are licensed drivers paying the higher rates, filed this action for injunctive relief only to bar CPM from continuing the Agreement for the remaining 60 years.

The questions presented involve the state action exemption as set out in *Parker v. Brown*, 317 U.S. 341 (1943), and are as follows:

1. Does the City of Chicago "actively supervise" a private monopoly like CPM's when CPM can only restrict the City's interference with its monopoly by requiring payment in damages for any loss in the monopoly profit expected to CPM under the 75-year Agreement?

2. When the City of Chicago has given CPM a 75-year private monopoly for all the revenue from its on-street parking system, does the

QUESTIONS PRESENTED—Continued

State of Illinois *itself* and not the City of Chicago have to "actively supervise" CPM in order for CPM to claim an exemption under *Parker*?

3. Did the Seventh Circuit radically depart from this Court's requirement that the State must clearly articulate and affirmatively express a policy in favor of this private monopoly of on-street parking when it relied principally on an Illinois law for parking garages, lots, and other off-street facilities that makes no reference to *on-street* parking?

PARTIES TO THE PROCEEDING

Petitioners Micah Uetricht and John Kaderbek were the Plaintiffs in the district court proceedings and Appellants in the court of appeals proceedings. Respondent Chicago Parking Meters, LLC, was the Defendant in the district court proceedings and Appellee in the court of appeals proceedings.

RELATED CASES

- *Uetricht v. Chicago Parking Meters*, No. 1:21-cv-03364, U.S. District Court for the Northern District of Illinois. Judgment entered January 24, 2022.
- *Uetricht v. Chicago Parking Meters*, No. 22-1166, U.S. Court of Appeals for the Seventh Circuit. Judgment entered April 7, 2023. Petition for rehearing denied May 8, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Micah Uetricht and John Kaderbek petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The Seventh Circuit's opinion is reported at *Uetricht v. Chi. Parking Meters, LLC*, 64 F.4th 827 (7th Cir. 2023) and reproduced at App. 1-32. The Seventh Circuit's denial of petitioner's motion for reconsideration and rehearing *en banc* is reproduced at App. 45. The opinion of the District Court for the Northern District of Illinois is reproduced at App. 33-44.

JURISDICTION

The Court of Appeals entered judgment on April 7, 2023. App. 1-32. The Court denied a timely petition for rehearing *en banc* on May 8, 2023. App. 45. On August 9, 2023, Justice Barrett extended the time for filing this petition to October 4, 2023. Application No. 23 A 108. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves interpretation of the Sherman Act, 15 U.S.C. §§ 1-2, and Illinois Municipal Code sections 65 ILCS 5/11-71 and 65 ILCS 5/1-1.

INTRODUCTION AND STATEMENT OF THE CASE

On September 7, 2021, the plaintiff licensed drivers who live in Chicago brought this action to declare that the 75-year term of the Chicago Parking Meter Concession Agreement ("Agreement") is in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2. That Agreement gives CPM the exclusive right to all revenue from the City's parking meters at double the prior meter rate and imposes damages upon the City for any interference with the guaranteed 75-year monopoly profit. In addition to the declaratory judgment, Plaintiffs sought to enjoin CPM from enforcing the Agreement for the 60 years remaining in the 75-year term, making it terminable at will by the City. Plaintiffs did not bring any damages claim.

To briefly describe the Agreement, in 2008, in return for a payment of $1.15 billion, the City of Chicago agreed to lease CPM its entire on-street parking meter system, approximately 36,000 meters, along with all revenue at double the existing meter rates. The City also agreed to give CPM this exclusive monopoly, without rebidding or resumption of control by the City, for

75 years. For such period, the City agreed not to use its police power or reserved powers over the streets and public ways to remove or reduce the number of meters unless it paid damages to CPM for any loss to its long-term guaranteed profit. Likewise, for 75 years, the City may not fail to raise the effective meter rates as necessary, relocate or reduce the number of meters however necessary for public safety or convenience, close off streets even for a single day's street fair, or try to reduce congestion with bus and bike lanes unless it reaches agreement with CPM by negotiation or arbitration as to the cost that the City must pay CPM for any interference with its monopoly profit.

While the City has made modest use of its police powers, for which it has paid damages, the City has so far taken no initiatives that would have any large scale impact on CPM's monopoly. Plaintiffs allege that the City does not have the financial capacity to do so, but even the modest changes in the number and location of meters, or holding of street fairs, or closing off of streets for emergencies has required the City to make so called "true-up" payments to CPM typically amounting to $25 million to $30 million annually. There is no precedent to CPM's control over the City or any similar arrangement in any other city of the country.

Since 2008, the Agreement keeps increasing in value to CPM, and, as of 2022, CPM had recovered, in just 14 years, the entire value of its original $1.15 billion investment along with a return of over $500 million. It may be fairly estimated that in the remaining

60-year term, CPM will realize a profit of over $8 billion if not more.

In addition to these restrictions, the CPM Agreement also prohibits the City from competing with CPM by lowering rates in the off-street parking facilities, including the public garages in the city center, to compete with the rates collected by CPM. Section 3.12 of the Agreement requires that the cost of off-street parking lots and garages be no less than three times higher than the highest on-street meter rate being collected by CPM.

Like other licensed drivers of the City, Plaintiffs have no alternative to regular or periodic use of the on-street parking meter system leased to CPM. Sooner or later, every licensed driver has to make a payment to CPM.

On July 5, 2021, Plaintiffs filed this challenge under Sections 1 and 2 of the Sherman Act in the United States District Court for the Northern District of Illinois. Plaintiffs shortly thereafter filed a First Amended Complaint. Plaintiffs also brought a claim under the Illinois Consumer Fraud and Deceptive Practices Act, which was not subsequently appealed and is now dropped from this case. Defendant CPM filed a motion to dismiss under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. On January 24, 2022, the District Court dismissed the First Amended Complaint. The District Court ruled, contrary to CPM's motion to dismiss, that Plaintiffs had standing and had suffered economic injury from the CPM Agreement,

that Plaintiffs had defined a relevant product and geographic market for purpose of a Sherman Act claim, and that Plaintiffs had suffered an antitrust-type injury, which the Sherman Act was meant to address. The District Court dismissed the First Amended Complaint, however, by finding that the CPM Agreement was a form of "state action" exempt from liability under this Court's decision in *Parker v. Brown*, 317 U.S. 341 (1943).

Plaintiffs filed a timely appeal. On April 7, 2022, the United States Court of Appeals for the Seventh Circuit affirmed the District Court's judgment that the CPM Agreement was a form of "state action" under *Parker.* On May 8, 2023, the Court of Appeals rejected Plaintiffs' petition for rehearing *en banc*. The Seventh Circuit held that CPM, a private equity firm, could invoke the *Parker* exemption under this Court's decision in *California Retail Liquor Dealers' Ass'n v. Midcal Aluminum*, 445 U.S. 97 (1980). In *Midcal*, this Court set out two factors or conditions for a private party to claim such a state action exemption. The Seventh Circuit found that the CPM Agreement met both factors. The first *Midcal* factor requires an "affirmatively expressed and clearly articulated" State policy in favor of the Agreement. *Id.* at 105. Finding the CPM Agreement met this condition, the Seventh Circuit principally relied on 65 ILCS 5/11-71-1 ("Division 71"), a statute entitled "Off-Street Parking." While Division 71 refers to and lists a series of "off-street parking facilities," it has no reference to *on*-street parking. The Court found that the heading "Off-Street Parking" was

irrelevant and that Division 71 in listing off-street parking facilities included the term "parking meters," which could include on-street parking meters.

The Seventh Circuit turns also to a new section, 65 ILCS 5/11-71-8 ("Division 71-8"), for support, not relied upon by the District Court nor discussed by the parties. However, as described further below, the Court quotes only the first sentence of Division 71-8 and leaves out the rest, which would make clear Division 71-8 is not applicable to this case.

Last of all, the Seventh Circuit found support for its conclusion from an Illinois law that is a blanket waiver of antitrust liability for any action that a municipality undertakes. 65 ILCS 5/1-1-10. By then adding up all three of these sources (the traditional power to regulate the streets and ways, Division 71, and the blanket waiver of antitrust liability for anything that a municipality might conceive to do), the Seventh Circuit concluded that the State of Illinois, which had no role in supervising the CPM monopoly, had endorsed the turnover of this public function to a private equity firm like CPM.

The Court then found for CPM on the second *Midcal* condition, which requires a policy must be " 'actively supervised' by the State itself." *Midcal, supra*, at 105. Interpreting this Court's decision in *Hallie v. City of Eau Claire*, 471 U.S. 34 (1985), the Seventh Circuit excused State supervision of the CPM Agreement. However, the Court failed to address *Hallie*'s footnote

10, *supra*, 471 U.S. at 46, which requires such active State supervision when a private party is involved.

The Seventh Circuit also held that City need only be the "effective decision maker" and that, even though the City had to pay damages for any interference with CPM's monopoly profit, the City met that standard, and no active State supervision was necessary. Citing public record information, the Seventh Circuit found, without the need for an evidentiary hearing, that the City was the "effective decision maker" because the City had in fact been paying damages in the form of "true-up" payments for meter relocations and street closings. The Seventh Circuit found that the payment of damages in the form of true-up payments demonstrated that the City was able to pay some amount of damages for use of its regulation of the streets and public ways and therefore the City was the "effective decision maker" despite the CPM Agreement.

The Court also purported to identify effective decision making by the City in that, according to newspaper accounts, the City's last two mayoral administrations had added over 2,500 new parking meters in total. However, the Court failed to note that, as pointed out in the cited stories, the revenue from these new meters will still go to CPM. The new meters were not intended to change or regulate the CPM Agreement in any way. Rather, they were a method of providing new revenue to CPM, at the expense of the City's drivers, for true-up payments. Fran Spielman, *Emanuel adding 752 metered parking spaces in central area*, CHICAGO SUN-TIMES (Nov. 4, 2016). John Byrne,

Another Chicago parking meter twist: 1,800 meters added since Mayor Lori Lightfoot took office, CHICAGO TRIBUNE (Aug. 14, 2022).

REASONS FOR GRANTING THE PETITION

The Seventh Circuit fundamentally misunderstood how the *Parker* state action doctrine applied to a private monopolist like CPM. The decision also creates a split in the Circuits in when to excuse active *State* supervision under this Court's decision in *Hallie.* The Ninth Circuit interprets footnote 10 of *Hallie* to require active State supervision when the municipality is not in *exclusive* and *sole* control of the function and no private party is involved. *Chamber of Commerce of the United States v. City of Seattle*, 890 F.3d 769, 782 (9th Cir. 2018).

The Seventh Circuit says no such State supervision is required when the City is the "effective decision maker," even if a private equity firm can contractually restrict the City's exercise of its police power over the streets and public ways. The Sixth Circuit appears to embrace both positions without choosing between them. *Michigan Paytel Joint Venture v. City of Detroit*, 287 F.3d 527, 538 (6th Cir. 2002). The *Parker* exemption to the Sherman Act is a judicially created doctrine, with no statutory basis, rooted in the sovereignty of the states. This Court has repeatedly limited the scope of this "state action" exemption, and, until this case, no court has ever allowed such a "state action" exemption

to a private equity firm without any State supervision at all.

In addition, the Seventh Circuit's decision relies on a finding that the City is the "effective decision maker" since the Agreement restricts, but does not prohibit absolutely, the use of the City's police power. Other Circuits, including the Sixth Circuit in *Michigan Paytel Joint Venture, supra*, have used the term, and this Court has supplied no clear definition as to what constitutes the "active supervision" or "effective decision mak[ing]" required in cases other than review of private party rate making. *See Lafaro v. New York Cardiothoracic Group*, 570 F.3d 471, 478-80 (2d Cir. 2009). In view of the uncertainty of the term, the Circuits require a clear definition of what this Court means by "active supervision" or "effective decision maker." Such a definition would determine whether this means unrestricted ability to change the terms of the private party's monopoly, and reverse any action, without payment of damages for lost monopoly profit, or whether it means *some* ability to regulate the private party's conduct.

Finally, this Court should exercise its supervisory function to prevent the expansion of the *Parker* immunity presented in this highly visible and continuing controversy over the CPM's 75-year monopoly. The Seventh Circuit's decision severely weakens the first *Midcal* factor, requiring a "clearly articulated and affirmatively expressed" State policy favoring such a 75-year lease for a fixed number of meters at a fixed price with a guarantee of all the revenue from the on-street

meters being diverted to a private-equity firm. This Court has described the two *Midcal* conditions as rigorous, and the finding of an express state policy should be especially rigorous when there is no active State supervision of the monopoly to prove the State's intent. *See FTC v. Ticor Title Ins. Co*, 504 U.S. 621, 643 (1992). It is a serious departure from this Court's precedent for the Seventh Circuit to rely on the limited authority of a statute for off-street parking to justify CPM's ability to restrict the City's control over meter rates, the number of meters, and the use of the streets and public ways.

A. Whenever a private party claims a state action exemption for its monopoly under *Parker*, the State itself and not a local government must supervise the monopoly.

In *Hallie, supra*, this Court excused the second *Midcal* factor of "active state supervision" of the City of Eau Claire's operation of a waste processing facility, if and only if, the City and no private actor was involved in performing the function. While placed in a footnote, this corollary follows:

> "Where state or municipal regulation by a private party is involved, however, active state supervision must be shown, even where a clearly articulated state policy exists."

Hallie, supra, at 46, n. 10.

In excusing state supervision when the municipality is the sole actor, the Court in *Hallie* presumed that

a municipality acts in the public interest and not for any private gain. But it is otherwise when a private party is involved, and the municipality is only regulating that private party. In this case, there is no *Hallie* exception, because the City is regulating CPM's private party monopoly. Notwithstanding footnote 10, and the clarity of this Court, the Seventh Circuit excuses "active state supervision" by finding the City is the "effective decision maker." By excusing State supervision whenever a private party is involved, the Seventh Circuit dispenses with this Court's easy-to-apply, bright-line standard, and engages in an evidentiary finding as to whether the City's regulatory authority suffices. The Seventh Circuit incorrectly states that both the Ninth Circuit in *City of Seattle* and the Sixth Circuit in *Paytel* agree that no State supervision is necessary if the City is the "effective decision maker" in regulating the monopoly. *City of Seattle, supra*, 890 F.3d 769, and *Paytel, supra*, 287 F.3d 527. To the contrary, the Seventh Circuit's decision creates a Circuit split. In *City of Seattle*, the Ninth Circuit held that *Parker* did not exempt a City ordinance that required independent-contractor drivers and the ride-share companies to bargain the rates of hire for the contractors. Applying *Hallie*, the Ninth Circuit required active State supervision because, in this case, the City of Seattle was supervising a group of private actors. *Id.* at 790. Contrary to what the Seventh Circuit says, the Ninth Circuit made no finding or reference as to whether Seattle was the "effective decision maker." Rather, in contrast to the Seventh Circuit, the Ninth Circuit applied *Hallie* footnote 10 and found that there must be active State

supervision when a private party is involved. There can be no presumption that a private party will act in the public interest. State supervision is always necessary over a private party claiming *Parker*'s state actor exemption. Nor can the City be presumed to act in the public interest when it enters an agreement that seeks to ensure, above all, the full realization of a private gain.

The Sixth Circuit's decision in *Paytel* is ambiguous as to whether it was applying footnote 10. In a case that challenged a contract obtained by Ameritech from the City of Detroit by an unlawful bribe, the Sixth Circuit initially applies *Hallie*'s footnote 10 and says there must be active State supervision when a private party is involved. *Id.* at 536. Later in the opinion, however, the Sixth Circuit requires active State supervision because the bribery precluded the City of Detroit from being an "effective decision maker."

With the Seventh Circuit and the Ninth Circuit in conflict over when active State supervision of a municipality is necessary, or what the rule of decision should be, and the Sixth Circuit appearing to endorse both positions, this Court should clarify that active State supervision is always required when a private actor like CPM is claiming the *Parker* state actor exemption.

B. There can be no "active supervision" when the State or City must pay damages for doing so.

This Court should clarify the uncertainty of the lower courts as to when the State is the "effective decision maker." While the Seventh Circuit erred by excusing State supervision in the first place, it also erred by not requiring *unrestricted* regulation of a private monopoly. This Court was clear enough what such active State supervision means in challenges to decisions made by private industry groups. In *Patrick v. Burget*, 486 U.S. 94 (1988), the State was the "effective decision maker" when it had unrestricted authority to reverse the anti-competitive conduct of the physician board of review. The Seventh Circuit, however, found that CPM could restrict the supervision of its monopoly by requiring payment of damages for any loss of the monopoly profit. The Seventh Circuit also did not discuss the restriction on the City's ability to compete with CPM, set out in Section 3.12 of the CPM Agreement, which prohibits the City's from lowering rates in its off-street downtown garages.

Rather than the City supervise CPM, the economic reality is that CPM can supervise the City's use of its police power over the streets and public ways and object and require payment for any use that interfered with its monopoly. Plaintiffs are aware of no case in which this Court has found the State to be the "effective decision maker" when the private party can place contractual limits on the State's right to make decisions. Without clarification from this Court, there

would be no standard to determine whether "some" ability to regulate is enough or how far the private party may go to restrict the State from being an effective decision maker.

The Seventh Circuit declared that it is only fair that CPM should have financial protection for its monopoly, but this begs the question as to whether CPM should have such a monopoly at all. After all, this Court disfavors *Parker* immunity, a judicially created doctrine. CPM is entitled to financial protection when CPM enters an agreement that does not create a 75-year barrier to re-bidding or bar City resumption of control or competition and that is a reasonable and not unreasonable restraint of trade. Plaintiffs do not challenge the City's agreement had it been for a reasonable term subject to renewal at reasonable intervals.

The Seventh Circuit also short-circuited any *evidentiary* requirement that the City was in fact "actively supervising" CPM by saying that it had the capacity to do so because it had made some true-up payments. The Court reached that decision not on the basis of an evidentiary record or even from obtaining the position of the City, which did not intervene, and which made no attempt to defend the CPM Agreement. The Court, relying on its own research, claimed to find proof that the City was effectively regulating CPM. The Court identified news stories stating that the City had recently added new parking meters in new areas of the City—752 under Mayor Rahm Emanuel's administration and 1,800 under Mayor Lori Lightfoot's administration. However, as the same news articles

cited by the Court make clear, the revenue from these new meters still goes exclusively to CPM:

> "Molly Poppe, a spokesperson for the city's Office of Budget and Management, said the additional spaces are expected to generate $3.4 million for the company that paid $1.15 billion to lease Chicago parking meters for 75 years . . . It will be used to off-set money that must be paid to Chicago Parking Meters LLC to compensate the company for meters taken out of service and for spaces used by people with disabilities.
>
> The last annual payment for those so-called 'true-up' costs amounted to $12 million." Fran Spielman, *Emanuel adding 752 metered parking spaces in central area*, CHICAGO SUN-TIMES (Nov. 4, 2016).
>
> " . . . the city will use [the money raised by the new meters] to make contractual payments to Chicago Parking Meters LLC for the cost of parking spots taken out of service for festivals, street repairs and other reasons." John Byrne, *Another Chicago parking meter twist: 1,800 meters added since Mayor Lori Lightfoot took office*, CHICAGO TRIBUNE (Aug. 14, 2022).

This increase in meters in no way indicates regulatory supervision by the City, nor does it interfere with CPM's monopoly profit. To the contrary, adding these meters is an additional burden on drivers for the purpose of securing that profit.

Paying damages to CPM is not the kind of "active supervision" that qualifies for a *Parker* exemption. The uncertainty as to what constitutes "active state supervision" or when the State is the "effective decision maker" has arisen in at least one other case. In *Lafaro v. New York Cardiothoracic Group*, 570 F.3d 471 (2d Cir. 2009), the Second Circuit required an evidentiary record to determine whether the State was in fact supervising the physician group. In contrast to the Second Circuit's requirement of an evidentiary hearing, the Seventh Circuit erred by failing to allow Plaintiffs to present any evidence at all. Because of these different approaches, this Court should clarify what evidence is required to determine that there is "active state supervision," as well as make clear that this is an affirmative defense that a private party like CPM has the burden of proving.

C. In finding the State has a clearly articulated policy in favor of the CPM monopoly, the Seventh Circuit has taken an approach that sharply departs from this Court's precedent and will lead to confusion in future cases involving the *Parker* exemption.

This Court has an important supervisory role over the contours of *Parker* immunity, as it is a judicially created doctrine with no statutory basis, rooted in state sovereignty. It is especially important to supervise its application to a private equity firm. The legitimacy of the City's agreement with CPM has been the subject of continued discussion in books and articles

and editorials from 2008 up to the current year. The consequence of this unregulated, and, in fact, unsupervised, monopoly that the City is not able to terminate or control has been featured even this year in prominent publications, including *Paved Paradise*, by Henry Grabar, as well as continued editorial and newspaper coverage in the *Chicago Tribune, Chicago Sun-Times*, and other media. *See*, *e.g.*, Fran Spielman, *Parking meter deal gets even worse for Chicago taxpayers, annual audit shows*, CHICAGO SUN-TIMES, (May 26, 2022). Neither the State of Illinois nor the City of Chicago appeared or sought to intervene to defend this Agreement.

For that reason, given the highly visible public controversy, the Court should clearly express how far the Seventh Circuit departed from the first *Midcal* factor when it decided that the State of Illinois had a policy that "clearly articulated and affirmatively expressed" support for the turnover of the on-street parking system to CPM. Nothing cited by the Seventh Circuit comes close to meeting the first *Midcal* factor, and it is inexplicable how the Seventh Circuit could have reached the conclusion it did. The Court initially cites a long-standing Illinois statute, dating back to the nineteenth century when horses travelled the streets, restating the traditional police power of a municipality over its streets and public ways. The Court then turns to its principal authority for lease of the City's on-street parking system—a statute that is headed "Off-Street Parking" and makes no mention of *on-street parking* at all.

As cited above, the statutory text is as follows:

"DIVISION 71. OFF-STREET PARKING

Sec. 11-71-1. Any municipality is hereby authorized to:

(a) Acquire by purchase or otherwise, own, construct, equip, manage, control, erect, improve, extend, maintain and operate motor vehicle parking lot or lots, garage or garages constructed on, above and/or below ground level, public off-street parking facilities for motor vehicles, parking meters, and any other revenue producing facilities, hereafter referred to as parking facilities, necessary or incidental to the regulation, control and parking of motor vehicles, as the corporate authorities may from time to time find the necessity therefor exists, and for that purpose may acquire property of any and every kind or description, whether real, personal or mixed, by gift, purchase or otherwise. Any municipality which has provided or does provide for the creation of a plan commission under Division 12 of this Article 11 shall submit to and receive the approval of the plan commission before establishing or operating any such parking facilities."

While the title of Division 71—Off-Street Parking—is not a formal part of the statutory language, it is an important guide to its purposes, and yet the Seventh Circuit completely disregarded it. Interpreting Division 71-1, the Court states that the term "parking meters" as used near the end of a series of terms

referring specifically and only to off-street lots, off-street garages, and "off-street parking facilities" implies the inclusion of *on-street meters*, on the public streets and ways. It is common knowledge, however, that the City of Chicago has above-ground City-owned lots that use individual parking meters, and any definition of off-street parking lots would include those that have such *off-street parking* meters. Under any traditional canon of statutory construction, it is out of place to use a general term like "parking meters" after a series of terms that specifically describe off-street parking in order to expand the scope of the statutory language to such different subject matter. Under the principle of *noscitur a sociis*, a term like "parking meters" following a series of terms specifically about off-street parking should take its meaning from the terms surrounding it. *See*, *e.g.*, *Yates v. United States*, 574 U.S. 528 (2015). Even more dubious is the Court's claim to rely on a state law, 65 ILCS 5/1-1-10, that is a blanket waiver of all liability of a municipality for anything that might constitute antitrust injury.

Even if the Seventh Circuit could expla1in why it would depart from such statutory construction, Division 71 is hardly a "clearly articulated and affirmatively expressed" state policy in favor of the CPM monopoly of the *entire* on-street meter system. In previous cases, the Illinois courts have treated Division 71 as referring only to off-street parking, *See*, *e.g.*, *Poole v. Kankakee*, 406 Ill. 521 (1950). No Illinois court has ever decided or even considered whether Division 71 applied to

on-street parking. Yet the Seventh Circuit refused Plaintiffs' request that it seek an advisory opinion from Illinois' highest court as it has in similar cases when presented with a novel question of state law. As noted above, the Seventh Circuit cited a provision in Division 71 that it believed had application here, namely, Division 71-8, though it failed to quote Division 71-8 in its entirely. The sentence relied upon by the Court is as follows:

> "The corporate authorities of any such municipality availing of the provisions of this Division 71 are hereby given the authority to lease all or any part of any such parking facilities, and to fix and collect the rentals therefor, and to fix, charge and collect rentals, fees and charges to be paid for the use of the whole or any part of any such parking facilities, and to make contracts for the operation and management of the same, and to provide for the use, management and operation of such lots through lease or by its own employees, or otherwise."

In a later sentence, which the Court omits, Division 71-8 states:

> "All income and revenue derived from any such lease or contract shall be deposited in a separate account and used solely and only for the purpose of maintaining and operating the project, and paying the principal of and interest on any revenue bonds issued pursuant to ordinance under the provisions of this Division 71."

This language refers to the rental of "facilities," which take the form of "use, management and operation of . . . *lots*. . . ." (emphasis supplied). The CPM Agreement is not a rental of any "lot" or other real property. Under the CPM Agreement there are no "rentals" from any "lot" and no rentals being deposited in a "separate account" for "operating the project." Like the rest of Division 71, this provision has no application to the CPM agreement.

CONCLUSION

Under this Agreement, CPM is supervising the City rather than the City supervising CPM. The City is subject to damages to CPM for any routine use of its police power, and the public interest is subject to the private interest of CPM. The Court should release the citizens of Chicago, and its licensed drivers, from this indenture, which has no precedent in this country, and has doubled the City's prior rates so that Plaintiffs pay to CPM the highest rates of any city of comparable size in the country outside of New York. CPM has already recovered its entire investment with a substantial return. It may well obtain an addition $8 billion or more in the sixty years the monopoly still has to run. At the very least, Plaintiffs are entitled to State supervision when a private equity firm claims to be a state actor entitled to a judicially created exemption from the Sherman Act. This Court should take certiorari to clarify once and for all that every private actor claiming a

state action exemption requires active supervision by the State itself, without the payment of damages for doing so.

Respectfully submitted,

October 3, 2023

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