

## Meet The Attys Fighting Cities' Regs On DoorDash, Grubhub

By Jack Karp

*Law360 (October 21, 2021, 10:53 AM EDT)* -- The attorneys behind a trio of lawsuits from food-delivery apps like Grubhub and DoorDash challenging New York City's and San Francisco's new delivery fee caps and data-sharing rules are used to fighting what they call "fundamental unfairness and government overreach."

In September, Gibson Dunn & Crutcher LLP partners Joshua S. Lipshutz and Anne Champion sued the city of New York on behalf of the operators of DoorDash, Caviar, Grubhub, Seamless, Postmates and Uber Eats claiming the city's recently extended 20% cap on the fees food-delivery apps can charge restaurants is unconstitutional and harms not only the apps but also the restaurants they serve.

Lipshutz and partner Michael Holecek filed a similar suit against San Francisco in July on behalf of DoorDash and Grubhub over that city's 15% fee cap, which was made permanent this summer.

"New York and San Francisco have taken the extraordinary measure of imposing permanent price controls on a private and highly competitive industry — the facilitation of food ordering and delivery through third-party platforms," Lipshutz told Law360 Pulse. "Those permanent price controls will harm not only the platforms, but also the revitalization of the very local restaurants that the cities claim to be helping."

Those two suits were quickly followed by a third, also in September, challenging a recent Big Apple ordinance that requires companies like DoorDash to disclose customers' names, telephone numbers, and email and delivery addresses to restaurants "in blatant disregard of the customers' privacy rights," Lipshutz said.

"These laws set a dangerous precedent of government overreach driven by naked animosity toward third-party platforms and unlawful economic protectionism," he said.

The trio of suits make a host of constitutional claims, including that both cities' fee caps and New York City's data-sharing law violate the contract, takings, due process and equal protection clauses of the U.S. Constitution as well as various provisions of the New York and California state constitutions.

The suits also claim San Francisco's fee cap and New York's data-sharing requirement violate the First Amendment.



Joshua S. Lipshutz



Anne Champion

It's not the first time these attorneys have taken on the government, said Lipshutz, who is based in Washington, D.C., and practices in Gibson Dunn's litigation department as well as its appellate and constitutional law, privacy and cybersecurity, and class action practice groups.

Lipshutz and Holecek, for instance, were on the team that defeated California's Proposition 8, which had banned same-sex marriage in the state.

That team persuaded first a trial court and then the Ninth Circuit that the same-sex marriage ban was unconstitutional, a victory that was sealed when the U.S. Supreme Court ruled in 2013 that the ban's backers lacked standing to defend the law, allowing gay couples in the Golden State to tie the knot.

Lipshutz and Champion also took on President Donald Trump when the Trump administration revoked CNN White House correspondent Jim Acosta's White House press pass. Acosta was barred from covering the president in 2018 after he questioned Trump's use of the term "invasion" to describe would-be immigrants making its way to the U.S. from Central America.

In their suit, the attorneys called the revocation an "unabashed attempt to censor the press" that violated the First Amendment. The administration restored Acosta's press credentials after a judge ruled that the administration had likely violated his right to due process.

Champion — who is based in New York and is a member of Gibson Dunn's transnational litigation, environmental litigation, media law, and intellectual property practice groups — was also one of the lead partners on a team that scored a victory over Albany County and its board of elections in a Voting Rights Act case, according to the firm.

After a multiweek trial, a district court ruled that the county had violated Section 2 of the VRA by adopting a redistricting plan that diluted the strength of minority voters, and the county was required to add a majority-minority district to its district map, the firm said.

Lipshutz also represented wireless industry trade group CTIA-The Wireless Association in its First Amendment challenge to a Berkeley, California, ordinance requiring cellphone retailers to warn consumers about radiation risks, he said.

And Holecek, a Los Angeles litigation partner who focuses on complex commercial litigation, class actions, labor law and data privacy, has worked on several cases that have made their way to the Supreme Court. In addition to the case challenging California's gay marriage ban, he was on the team that won a unanimous decision from the justices that exercising general personal jurisdiction over a foreign corporation based on a subsidiary's in-state activities violates due process, according to the firm.

But the law was not the first field of endeavor for any of the three attorneys.

Lipshutz, who earned undergraduate degrees in finance and systems engineering from the Wharton School of the University of Pennsylvania, according to his firm bio, worked as a principal investment professional at Silver Lake Partners and an investment banking associate at Goldman Sachs & Co. before turning to law.

"My training and experience in finance gives me a unique perspective when advising clients," Lipshutz said. "Companies are not in business to bring lawsuits, so I always ensure that my legal advice takes into

account the client's business objectives."

"He has a unique background that combines significant business and finance experience with an extremely successful litigation practice," Gibson Dunn Chair and Managing Partner Barbara Becker said when announcing that Lipshutz was being made the firm's first-ever chief operating officer in May.

Champion, meanwhile, earned her degree in physics from the University of Iowa and received several awards for excellence in the field before earning her law degree from George Washington University Law School, according to her firm bio.

"Physics or any hard science is great training for the law because it sharpens your analytical abilities," Champion said. "It also expands your horizons as a lawyer if you are not afraid to dig into technical subject matter."

And Holecek founded and served as managing director of the second-largest residential real estate network in the Czech Republic before attending University of Chicago Law School, according to his firm bio.

Since becoming an attorney, Holecek has also been recognized for his work on behalf of domestic violence survivors and serves on the board of directors of the Family Violence Appellate Project, which provides free legal help to survivors of domestic violence.

"As a junior associate, I worked on a case in which we helped a young mother obtain a restraining order against her abusive boyfriend. Her strength and courage were inspirational," Holecek said. "Since then, I've taken on at least one new pro bono domestic violence case per year."

"As lawyers, we have the power to use the legal system to radically improve people's lives, including by protecting them from physical violence," he added.

The trio are working now to free food-delivery companies from what they see as interference by New York and San Francisco in the form of permanent price controls and data-sharing rules.

The New York City Law Department declined to comment on the suits, and the San Francisco city attorney's office did not respond to a request for comment.

But in a motion to dismiss, San Francisco said that "since well before the pandemic, many people expressed concern that high commissions charged by the large third-party platforms threatened restaurants' ability to operate profitably."

There is "abundant information in the public realm that delivery platforms threaten independent restaurants, both because they can impose high commissions that destroy restaurants' profit margins — even to the point that some lose money on each order — and because delivery orders through third-party apps can cannibalize a significant percentage of more profitable dine-in sales," San Francisco said.

The Gibson Dunn attorneys said they disagree.

New York's and San Francisco's new regulations are "intended to favor one subset of the public — local restaurant owners — rather than the public at large," the attorneys say in all three of their complaints.

The suits say companies like DoorDash and Grubhub have been instrumental in keeping restaurants afloat during the COVID-19 pandemic and are committed to restoring the vibrancy of local restaurants. If those companies increase the fees they charge customers to offset the fee caps on eateries, it could reduce demand for food delivery, and restaurants and their customers, as well as the apps, will suffer.

"In this manner, the ordinance will likely have the perverse result of harming the businesses and public that it purportedly intends to help," the complaints insist.

--Editing by Alyssa Miller.

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