Per Curiam

SUPREME COURT OF THE UNITED STATES

IDIOTIC_LEADER, ET AL. *v.* CITY OF LAS VEGAS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES GOVERNMENT

No. 3–5. Decided July 4, 2017.

PER CURIAM.

We held in *United States* v. *City of Las Vegas*, 2 U. S. 24 (2017), that a city government has no power to "pass laws" absent statutory or constitutional authority to that effect. *Id.*, at 29. And subsequently, in *Ryan_Revan* v. *United States*, 2 U. S. 34 (2017), we concluded that Congress could not make any explicit grant of that legislative power to the city councils. See *id.*, at 39. Nonetheless, the Las Vegas City Council enacted the Business Limits Act (BLA). This case concerns the constitutionality of that bill.

I

The BLA was passed unanimously by the Las Vegas City Council on March 21, 2017, and the Mayor signed it into effect the following day. It prohibits a person from holding a position of leadership (the four highest ranks) "in more than [two] businesses *approved to operate in Las Vegas*." § 2(a) (emphasis added). In the event that a person is found to be in violation of that rule, the bill provides that they "shall be notified by the Las Vegas City Council" of that violation and then must either "resign", or be "dismissed by their superiors." *Ibid.* To ensure compliance with these rules, it provides that a business which does not comply runs the risk of their city team being "removed by the City Council." § 2(c).

The petitioner, Idiotic_Leader, is Vice President of both the Las Vegas Taxi Service, and Koala Café. The Taxi Service is currently implemented into Las Vegas and the Koala

Café was approved by the city council but has not yet been implemented. Because he held one of the four highest ranks in two businesses "approved to operate in Las Vegas", he was in violation of the BLA. He filed suit to prevent the city council from enforcing the regulation against him or his affiliated businesses.

II

City councils derive their authority from two distinct sources. First, from the Federal Infrastructure Reform Act (FIRA), which assigns them certain regulatory duties, and second, their inherent development powers. We now turn to the first.

A

FIRA was passed by Congress in response to our decision in *Ryan_Revan*. In that case, we overturned the Home Rule Act on the basis that it violated the doctrine of nondelegation. That law broadly granted city governments the power to "enact laws" on three subjects: "[T]raffic and road safety"; "possession or use of [drugs]"; and the "possession or use of firearms." § 2. Perhaps learning from our decision, Congress chose to limit its grants of authority to the cities to the performance of specific regulatory functions, as opposed to the fulfilment broad, legislative mandates.

As relevant, Title I of FIRA empowers city councils to "issue city licenses to businesses", which allow them to operate within that city (without a federal license) and employ "up to forty workers". § 104(b). If a business wishes to employ more than forty people, it must secure a federal license, which is issued by the Department of Commerce and Labor. FIRA also allows the city councils to "prescribe such regulations as are necessary to carry out their functions under" Title I. § 106. The issuance of city licenses to businesses under section 104 is undoubtedly one of the functions referred to in section 106. The question then is whether the

BLA was a permissible exercise of section 106 authority.

1

In general, courts do not question the judgment of political institutions on what is "necessary" to the fulfilment of their duties. For example, with respect to Congress' authority under the Necessary and Proper Clause, we said: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *McCulloch* v. *Maryland*, 4 Wheat. 316, 421 (1819). That deference is due because "members of this Court … possess neither the expertise nor the prerogative to make policy judgments." *National Federation of Independent Business* v. *Sebelius*, 567 U. S. ___, ___ (2012) (slip op., at 6) (opinion of Roberts, C. J.). For those reasons, we will presume—for the purposes with which we are concerned—that the city council's judgment that the regulation was "necessary" is correct unless it is facially illegitimate.

The Las Vegas City Council was not discrete with its reasoning for the passing of the BLA. In fact, it dedicated an entire section of the regulation to explaining its purpose in enacting it. It begins by saying that it is "well known" that "certain persons are in charge of many businesses by being Presidents of other high ranks." § 3. It continues, that the situation presents a "major issue within Las Vegas" because "[o]ne player" should not control "the entire business sector." *Ibid.* Therefore, the council concludes, the bill is "necessary" to "create more variety and have different people lead the [private] sector." *Ibid*. On its face, this is a justified basis for a few reasons. First, the regulation is aimed at promoting a competitive (and diverse) private sector. The Federal Infrastructure Reform Act itself states that "reform[ing] the private sector" is one of its principle goals.

Promoting competition and diversity within the private sector is in furtherance of that goal. And second, the council also expresses its belief that absent the regulation, new investors and entrepreneurs will have a difficult time getting their "businesses approved." *Ibid*. This is directly related to the licensing duties performed by the council under section 104.

2

In most cases, where there is a statutory ambiguity which concerns the scope of a regulator's authority to regulate, its interpretation of that authority deserves deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). This deference is premised on a general understanding that when Congress leaves "ambiguity in a statute" which is administered by a regulator, it expects that "the ambiguity [will] be resolved" by the regulator, "rather than [by] the courts." *Smiley* v. *Citibank (South Dakota), N. A.*, 517 U. S. 735, 740–741 (1996). What this presumption (*Chevron* deference) does is it allows Congress to easily determine what level of discretion will be left to a regulator. "Congress knows to speak in plain terms when it wishes to circumscribe, and in capacious terms when it wishes to enlarge, agency discretion." *Arlington* v. *FCC*, 569 U. S. ___, ___ (2013) (slip op., at 5). In this case, Congress has done the former.

Section 104 is very clear with its meaning: City governments will have the ability to license small businesses. When acting in that capacity, section 106 permits them to make regulations governing that process, and setting requirements for eligibility and the like. What the BLA does cannot be said to fall within that authority because it goes *well beyond* the act of granting a license. Instead, it makes rules which it says all businesses approved to operate in Las Vegas (importantly not making a distinction between federally licensed and city licensed businesses) must abide by.

That has the makings of a law more so than it does a regulation. For those reasons, the BLA cannot be construed to be a proper exercise of the city council's regulatory power under FIRA. Next, we turn to its constitutional development power.

B

The Constitution reserves to the developers—and the Founder—full control over "development work." U. S. Const. art. I, § 1. This reservation applies to all powers associated with development (such as creation of cities, making updates, adjusting teams, etc.), but also preserves the traditional role of developers in our society.[1] The developers delegated certain development-related functions to the various city councils. This power is referred to as the "development power." *Supra*, at ___ (slip op., at 2). Each city has a city council which wields the "development power", and each is constituted at the pleasure of the city's sitting developers, and the Founder. The development power, possessed by the cities, is similar in many respects, to the spending power possessed by Congress (in real life).

In real life, Congress serves a much narrower purpose than it does here. It is, of course, the national legislature,

[1] In reality, article 1, section 1, which vests in Congress "all legislative powers", does not actually grant any authority to the developers. It merely excepts "development work which requires the developers or Founder" from the powers granted to Congress. This has the effect of merely preserving the traditional role of the developers, and does not grant any new, free-standing powers. For example, the developers—as the clause specifically denotes—are responsible for "development work" (namely, as mentioned, creating and updating cities), but they also traditionally are responsible for, among other things, administering the federal Presidential elections. See *Isner* v. *Federal Elections Commission*, 3 U. S. ___, ___ (2017) (slip op., at 2) (ANTONINGSCALIA, J., statement respecting the denial of certiorari) (explaining that the "Federal Elections Commission"—which administers Presidential elections—is "governed by the Clan Managers.")

but is one of many such institutions which possesses the legislative power. In real life, there are 50 sovereign states, each with its own legislature. There, Congress legislates only under roughly 20 enumerated powers, which follow:

> "To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; To borrow Money on the credit of the United States; To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States; To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures; To provide for the Punishment of counterfeiting the Securities and current Coin of the United States; To establish Post Offices and post Roads; To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries; To constitute Tribunals inferior to the supreme Court; To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations; To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water; To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years; To provide and maintain a Navy; To make Rules for the Government and Regulation of the land and naval Forces; To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

> To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress; To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; And To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U. S. Const. art. I, § 8 (real).

The first of those clauses, which provides Congress with the authority "to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States", U. S. Const. art. I, § 8, cl. 1 (real), is referred to as the Taxing and Spending Clause. The Taxing and Spending Clause is utilized by Congress to enact programs which often go beyond its own authority. It does this by incentivizing states to implement the program on its behalf using its spending power. Similarly, the city councils (here) may incentivize private institutions to comply with rules it sets through its development power. However, because the city councils have no power to "pass laws" with the effect of those rules, *City of Las Vegas*, 2 U. S., at 39, similar to Spending Clause legislation,

these offers by the city, if accepted, should be "characterized … as 'much in the nature of a contract.'" *Barnes* v. *Gorman*, 536 U. S. 181, 186 (2002) (quoting *Pennhurst State School and Hospital* v. *Halderman*, 451 U. S. 1, 17 (1981)) (emphasis deleted). The legitimacy, then, of that exercise of development power rests upon whether the private institution "voluntarily and knowingly accepts the terms of the 'contract'" offered by the city council. *Pennhurst*, *supra*, at 17. The application of undue pressure, therefore, would reduce the decision by a private institution to accept those terms from "voluntary" and "knowing" to mandatory and enforced (much like a law). Accordingly, we should scrutinize development power legislation to be sure that the city councils do not use development decisions to exert a "power akin to undue influence." *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 590 (1937). And certainly, city councils do possess the authority to apply *some* pressure, but where "pressure turns to compulsion", *ibid.*, we must intervene. We now consider whether the BLA applies undue pressure—through its use of development power—upon private institutions (or persons) to give it the effect of a law.

1

The first criterion we should look to in cases such as these is what the rule actually asks of a private institution. In this case, it 'asks' them to enforce a ban on an individual holding high ranks in multiple businesses. This, aside from being strikingly similar to federal *laws* from the past barring employment in greater than some number of agencies, doesn't just ask a business to slightly change a policy it has, or modify its structure, or anything like that: It **deputizes** the businesses to enforce a limitation it places on *individuals*, who are not parties to the "contract". That certainly has the makings of a law.

A law is "a rule … prescribed by the … state to its subjects,

for regulating their actions." N. Webster, An American Dictionary of the English Language (1828). A law comes in one (or as a mix) of three general forms: "imperative" (commanding what shall be done), "prohibitory" (restraining certain actions), or "permissive" (declaring what may be done without recourse). *Ibid*. The regulation laid down by the city council is a mix of the first and second variety: imperative and prohibitory. It commands the businesses to enforce the prohibition it places upon individuals. For those reasons, the BLA has the makings of a law and is subject to review under the second criterion.

2

As we have already established, a city council may not leverage its development power to impose "undue pressure", *supra*, at ___ (slip op., at 8), on a private institution (or person)[2] to bring them into compliance with a regulation or program it has enacted. The decision to accept the "contract", *ibid*., must be made by the private institution "voluntarily and knowingly", *ibid*., and through their "unfettered will." *Steward Machine*, *supra*, at 590. This should not be taken to mean that a city cannot apply *some* pressure to a private institution. Indeed, it can. It could, for example, condition continued access to a tool, or vehicle on compliance. In this case, however, it goes quite a few steps further than that.

Here, the city council threatens that a noncompliant business runs the risk of their team being removed from the city. See *supra*, at ___ (slip op., at 1). A city team is perhaps the most valuable asset a private institution may have access to. To threaten revocation of a city team is to essentially leave them with no choice but to either comply with the regulation or close down. Truly, that is no choice at all.

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[2] And they may not apply any pressure at all in the case of a federal institution (agency, department, or branch).

Per Curiam

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The Business Limits Act is not a valid exercise of section 106 authority under the Federal Infrastructure Reform Act because it goes beyond the issuance of city small business licenses (which the council's do not have statutory authority to revoke) and enters the realm of their actual operation. That being said, the Business Limits Act is not a proper exercise of the Las Vegas City Council's development power either.

A city council has the authority to offer benefits or special features to private institutions and require compliance with certain terms as a precondition. They may even, within reason, apply pressure to secure that compliance. They may not, however, apply so much pressure that there is no real choice available to the private institution. To hold otherwise would be to acknowledge an inherent authority to make laws possessed by the city councils, which we have already resolved does not exist. See *City of Las Vegas*, 2 U. S., at 39.

For the reasons here stated, we hold the Business Limits Act invalid in its entirety.

It is so ordered.