Case No. 126605

In the Supreme Court of Illinois

JANE DOE,

Plaintiff-Appellant,

v.

LYFT, INC., ANGELO MCCOY, and STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS,

Defendants-Appellees.

On Appeal from the Appellate Court of Illinois,
First Judicial District, Case No. 1-19-1328,
There on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Law Division, Case No. 17 L 11355,
Hon. Patricia O'Brien Sheahan, Judge Presiding

APPELLANT'S BRIEF

J. Timothy Eaton
Jonathan B. Amarilio
TAFT STETTINIUS & HOLLISTER LLP
111 E. Wacker Drive, Suite 2800
Chicago, Illinois 60601
Tel.: 312.527.4000
teaton@taftlaw.com
jamarilio@taftlaw.com

Timothy S. Tomasik
Patrick J. Giese
TOMASIK KOTIN KASSERMAN, LLC
161 N. Clark Street, Suite 3050
Chicago, Illinois 60601
Tel.: 312.605.8800
tim@tkklaw.com

Attorneys for Plaintiff-Appellant Jane Doe

ORAL ARGUMENT REQUESTED

E-FILED
5/28/2021 2:25 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

TABLE OF CONTENTS AND
POINTS AND AUTHORITIES

Page

NATURE OF THE ACTION

This action was brought against Defendant Lyft, Inc., its driver Angelo McCoy, and Sterling Infosystems, Inc., Lyft's driver background screening provider, for negligence, fraud, false imprisonment, assault, and battery. These claims arose from the kidnapping and brutal repeated rape of Plaintiff Jane Doe by Lyft's agent, McCoy. Lyft brought a motion to dismiss Jane's vicarious liability claims, particularly the assault, battery, and false imprisonment claims. SR30.[1] The circuit court granted Lyft's motion and certified two controlling questions for interlocutory review under Supreme Court Rule 308. SR269 SR273; A3. The appellate court agreed to consider the questions and a divided appellate court panel concluded that the Transportation Network Providers Act ("TNPA"), 625 ILCS 57/1 *et seq.*, constitutionally immunizes rideshare carriers like Lyft from vicarious liability when their drivers sexually assault their passengers. A75. Jane subsequently filed a petition for leave to appeal to this Court, which was granted. The certified questions presented are raised on the pleadings.

---

[1] Citations to the Supporting Record filed with Jane's July 1, 2019 Rule 308 Application for Leave to Appeal are referenced as "SR__," and citations to Jane's Rule 342 appendix are referenced as "A__."

ISSUES PRESENTED FOR REVIEW

The circuit court certified the following questions pursuant to Supreme Court Rule 308:

1. Does Section 25(e) of the Transportation Network Providers Act, 625 ILCS 57/25(e), which states that transportation network companies (TNCs) "are not common carriers," preclude TNCs, such as Lyft, from otherwise being subject to the highest duty of care under common law, like that of a common carrier's elevated duty to its passengers?

2. If TNCs are precluded from being subject to a common carrier's elevated duty of care to passengers, is the Transportation Network Providers Act, including Section 25(e), a constitutional exercise of the legislature's power?

JURISDICTION

On June 4, 2019, the circuit court granted Lyft's partial motion to dismiss and certified two questions pursuant to Supreme Court Rule 308. SR269; SR273; A3. On July 1, 2019, Jane timely filed her application for leave to appeal, which was granted by the appellate court on August 1, 2019. On September 30, 2020, the appellate court issued its opinion answering the two certified questions. A75. On November 3, 2020, Jane timely filed a petition for leave to appeal to this Court pursuant to Rule 315, which was granted on January 27, 2021. A11. This Court thus has jurisdiction to hear this appeal pursuant to Supreme Court Rules 308 and 315(b). Ill. S. Ct. R. 308 & 315(b).

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

1. "The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const. 1970, art. IV § 13 ("special legislation clause").

2. "A bill shall be read by title on three different days in each house…. before final passage." Ill. Const. 1970, art. IV § 8(d) ("Three-Readings Rule").

3. "TNCs or TNC drivers are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle services." 625 ILCS 57/25(e) ("Section 25(e)").

STATEMENT OF FACTS

I. Factual background

A. The attack on Jane by Lyft's driver

As the circuit court characterized it, "[t]his case arises from a heinous criminal act." SR274. On the evening of July 7, 2017, Jane was out with her friends in Chicago's River North neighborhood celebrating a job offer she recently received. As the celebration drew to a close, Jane did what Lyft told her and many millions of others to do, hail a Lyft rather than a taxicab for safe transportation home. SR15-16. Jane used Lyft's smartphone application ("app") to hail a Lyft vehicle, which soon arrived with McCoy as its driver. *Id.* Jane believed she was safely on her way home and fell asleep in the backseat

of the vehicle. She did not and could not know that the driver Lyft selected for her had a criminal history spanning three decades. SR13-14.

Rather than take her home, McCoy drove Jane to a dark and secluded alley, woke her, zip-tied her hands, and brutally sexually assaulted her multiple times at knife point. SR1. McCoy then left Jane in the backseat of the vehicle and began to drive away with her, his intended plans for her unknown to this day. Jane had the presence of mind to escape from the Lyft vehicle when McCoy momentarily stopped at a traffic light. She ran to a nearby car, pleaded for help, and was driven away to safety and medical care. SR2. This is not an unusual occurrence.

B. Lyft's record of prioritizing profits over passenger safety

Lyft is a popular, publically-traded, and rapidly-expanding rideshare transportation company, providing on-demand ride-hailing passenger transportation to tens of millions of members of the general public in hundreds of cities in the United States each year, and earning billions of dollars in revenue. SR2-4. In 2017 alone, Lyft provided over 500 million rides. *See* Tanya Dua, *Lyft Marketing Chief: We see ourselves as the 'inevitable' No. 1*, Business Insider (Dec. 21, 2017), https://www.businessinsider.nl/lyft-marketing-chief-we-see-ourselves-as-the-inevitable-no1-2017-12/.[2] Lyft's valuation at its public offering was over $24 billion. *See* Carl O'Donnell & Joshua Franklin, *Lyft*

[2] When Jane filed her complaint in 2016, this figure was 160 million rides, illustrating Lyft's exponential expansion. SR4.

valued at $24.3 billion in first ride-hailing IPO, Reuters (March 28, 2019), https://www.reuters.com/article/us-lyft-ipo/lyft-valued-at-24-3-billion-in-first-ride-hailing-ipo-idUSKCN1R92P4).[3]

As one of the two major ridesharing companies in the United States (the other being Uber Technologies, Inc.), Lyft has expanded the passenger transportation market at a dangerous price to its passengers. While Lyft advertises its transportation service as a safe alternative to other means of transportation, especially taxicabs, and makes particularly targeted efforts to attract young women as passengers, its expansion has been fueled by lax safety practices resulting in thousands of reported sexual assaults. SR8-12. *See, e.g.*, Cara Kelly & Tracy Nadolny, *Rape, assault allegations mount against Lyft in what new suit calls a 'sexual predator crisis,'* USA Today (Sept. 4, 2019) https://www.usatoday.com/story/news/investigations/2019/09/04/lyft-rape-sexual-assault-lawsuit-crisis/2165119001/ (discussing rideshare sexual assaults and Lyft's marketing of itself as "disrupting the taxi industry" by offering "a safe option for female passengers"); Eric Westervelt, *Lyft Facing Flood of Lawsuits After Riders Report They Were Sexually Attacked by Drivers*, NPR, All Things Considered (Sept. 11, 2019),

---

[3] Given the procedural posture of the case, Jane asks the Court to take judicial notice of this and other news articles referenced herein as matters of public record that will aid the Court in its understanding of the type and scale of the problem presented. *See K. Miller Constr. Co., Inc. v. McGinnis*, 238 Ill. 2d 284, 291 (2010) (reviewing courts may take judicial notice of facts when considering a section 2-615 motion); *Hadley v. Doe*, 2015 IL 118000, ¶ 36 (reviewing courts may take judicial notice of news media coverage).

https://www.npr.org/2019/09/11/759899409/lyft-facing-flood-of-lawsuits-after-riders-report-they-were-sexually-attacked-by (discussing rideshare sexual assaults as an "epidemic" and Lyft's marketing of itself as a "woke" alternative to taxicabs); Shannon Bond, *Uber Received Nearly 6,000 U.S. Sexual Assault Claims in Past 2 Years*, NPR (Dec. 5, 2019), https://www.npr.org/2019/12/05/785037245/uber-received-nearly-6-000-u-s-sexual-assault-claims-in-past-2-years).[4]

When Lyft's drivers sexually assault passengers, the company often fails to take even the most basic corrective measures. For example, Lyft has reportedly allowed drivers accused of sexual assault by passengers to continue driving for the company. *See* Janet Burns, *Rider Lawsuit Says Lyft Mishandles Assaults, Rapes, Its 'Sexual Predator Crisis,'* Forbes (Sept. 5, 2019), https://www.forbes.com/sites/janetwburns/2019/09/05/lyft-lawsuit-14-former-riders-allege-sexual-assault-rape-since-2018/?sh=7343848f7512; Alison Turkos, *Why I'm Suing Lyft*, Medium (Sept. 17, 2019), https://medium.com/@alturkos/why-im-suing-lyft-6a409e316d1f. In this case, when Jane reported her rape to Lyft, the company responded not by aiding her,

[4] It is a widely-known fact that only a small percentage of sexual assaults are reported each year (Rachel Morgan, Ph.D, and Jennifer Truman, Ph.D., *Criminal Victimization Report, 2019*, at *8, United States Department of Justice, Bureau of Justice Statistics (Sept. 2020), https://www.bjs.gov/content/pub/pdf/cv19.pdf), which suggests that the number of rideshare passengers sexually assaulted by drivers is much higher than even these "epidemic"-level figures.

but by blocking her from its app and referring her to the generic "help" page on its website. SR14.

C. Lyft and Uber's lobbying efforts to obtain special treatment

Despite their poor safety record, or perhaps because of it, Lyft and Uber spend many millions of dollars each year lobbying federal, state, and local governments to exempt themselves from regulation and insert poison pill provisions into regulations meant to temper their worst failings. *See* Joy Borkholder, *Uber State Interference: How TNCs Buy, Bully, and Bamboozle Their Way to Deregulation, National Employment Law Project* (2018), https://www.nelp.org/publication/uber-state-interference/. According to one nonprofit, nonpartisan research group that tracks lobbyist spending, Lyft spent over two million dollars lobbying the federal government in 2020. Center for Responsive Politics, *Lyft Inc. Annual Report* (2020), https://www.opensecrets.org/federal-lobbying/clients/summary?id=D00006778. In California alone, rideshare and several other gig economy companies recently spent hundreds of millions of dollars fighting increased state regulation. *See* Jeremy White, *Gig companies break $200M barrier in California ballot fight*, Politico, https://www.politico.com/states/california/story/2020/10/29/gig-companies-break-200m-barrier-in-california-ballot-fight-9424580. Illinois is no exception.

D. The Transportation Network Providers Act

The TNPA, at issue here, began its legislative journey in 2014 as House Amendment No. 1 to Senate Bill 2774, which was a wholly unrelated bill addressing the regulation of public accountants. SR145-65; A109-14. The Illinois Constitution requires all bills to be read out on the House and Senate floors on three separate days before a vote on passage. Ill. Const. 1970, art. IV, § 8(d). On December 2, 2014, following the second reading of S.B. 2774, the bill's contents were entirely stripped out and replaced with House Amendment No. 1, creating the TNPA. A117. The new bill was referred to the House Rules and Business and Occupational Licenses committees the same day, referred out of committee the next day, and after a "short debate" in the House and only one reading on the floor of each chamber, it was immediately passed on December 3, 2014, the final day of the legislative session. SR161-65; SR189-211; A109-47. House Amendment No. 1 was a complete rewrite of S.B. 2774 on a totally unrelated subject, and yet because of this maneuver it assumed the same procedural posture as the prior bill.[5]

As its House sponsor introduced it, the purpose of the TNPA was "to protect our constituent's [*sic*] safety." SR190; A129 (statement of Representative Zalewski). The TNPA did this by: providing basic insurance

---

[5] Prior to this, S.B. 2774 had survived as a non-germane shell bill in waiting. A nearly identical bill addressing the regulation of tax preparers, House Bill 4381, passed both houses on May 28, 2014, and was signed into law by the governor on August 25, 2014, rendering S.B. 2774 redundant. Public Act 98-1040 (eff. Aug. 25, 2014); 225 ILCS 450/30.9.

requirements (625 ILCS 57/10); providing minimum driver qualification requirements (625 ILCS 57/15; 625 ILCS 57/30(e)); prohibiting discrimination against passengers (625 ILCS 57/20); requiring zero-tolerance drug and alcohol policies (625 ILCS 57/25(b)-(c)); requiring rideshare vehicles meet minimum safety and emissions standards (625 ILCS 57/25(d)); regulating how rideshare companies could charge their passengers (625 ILCS 57/30(a)-(b), (d)); requiring drivers provide passengers with their identities and license plate information (625 ILCS 57/30(c)); and allowing taxicabs (common carriers subject to the highest duty of care to their passengers) to use ridesharing apps to pick up passengers (625 ILCS 57/30(f)).

Section 25(e) of the TNPA, in contrast, stood as an outlier, stating that "TNCs [*i.e.*, rideshare carriers] or TNC drivers are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle services." 625 ILCS 57/25(e). Lyft argues, and the courts below agreed, that this provision shelters it from common carrier status and thereby from vicarious liability when its drivers attack its passengers.

Although Section 25(e) was never discussed in floor debates or committee hearings, the TNPA's sponsor acknowledged during the short House debate that the bill was not the work of a legislative drafting committee and the normal course of lawmaking, but rather the product of unspecified "negotiations with Uber" and an unstated agreement reached with rideshare

companies. SR189; SR192; SR198 (statements of Representative Zalewski). Indeed, the record reflects that Lyft was text messaging statements of support to the House sponsor during that floor debate. SR198.

When the TNPA's sponsor was asked during the debate if sex offenders could drive for rideshare carriers under the bill, he answered that "it's safe to assume, not only is there a legal prohibition from [sex offenders] working there, but Uber and Lyft are hopefully going to have challenges placing that person into employment." SR202 (statement of Representative Zalewski). The sponsor assumed that Lyft could not and would not hire rapists. He was wrong. As Jane and many other women have alleged and can attest from bitter experience, Lyft often hires drivers who sexually assault its passengers. SR8-12.

Rising in opposition to the hasty manner in which the TNPA was presented, one lawmaker said that rideshare companies "like Uber and Lyft" presented "serious issues" that needed to be addressed by meaningful regulation in the normal legislative course. SR195 (statement of Representative Harris). "As an example, the security of passengers, background checks for drivers. You know, you want to make sure that when you're picked up and taken to your home that the driver's not 'Joe the sexual assaulter.'" *Id.*

Another lawmaker added his concern that the bill favored Lyft and Uber at the expense of other passenger transportation carriers, like taxicabs, stating "I still have a number of concerns about this. I think there's a major gap. I

think we are somewhat picking winners and losers in an industry that provides the same service, so I think we need to continue work on this." SR206. The bill nonetheless passed within a day of when it was first introduced to the General Assembly, and was signed into law immediately thereafter by Governor Quinn on his final day in office. SR165. When Jane was later kidnapped and raped by Lyft's driver, the company invoked Section 25(e) of the TNPA as a shield to vicarious liability.

II. Procedural history

A. The circuit court proceedings

In the wake of the attack by Lyft's driver, Jane filed suit against Lyft, Sterling, and McCoy. SR1. As to Lyft, Jane claims the company is both directly liable for negligently hiring, supervising, and retaining McCoy, and vicariously liable for her assault, battery, and false imprisonment. SR17-25. Jane further claims that although Lyft spent years telling the public that it offered a safe alternative to taxicabs, it actually did much less to protect passengers' safety than advertised. SR4; SR11-12; SR17-18.

Lyft brought a partial motion to dismiss Jane's vicarious liability claims pursuant to 735 ILCS 5/2-615, arguing it could not be held vicariously liable for the criminal acts of its driver. SR30. When Jane argued that, as a passenger transportation carrier, Lyft has the same high duty of care to its passengers as a traditional common carrier, Lyft invoked TNPA Section 25(e) for the first time, arguing it exempts rideshare companies from common carrier status and

any heightened duty to its passengers. SR38; SR53. Jane countered that Illinois common law holds even non-common carrier passenger transportation companies to a high duty of care when those carriers control their passengers' safety. SR62. She further argued that Section 25(e) is unconstitutional special legislation, and the manner of the TNPA's passage was unconstitutional for violating the Three-Readings Rule. *Id.*[6] The circuit court granted Lyft's motion to dismiss and certified the two questions referenced above for immediate review under Supreme Court Rule 308. SR269; SR273.

B. The appellate court's split decision

The appellate court panel answered the two certified questions in Lyft's favor. Addressing the common law question first, the panel held in sum that Section 25(e) precludes subjecting rideshare carriers to the same high duty of care to which common carriers are held because it says rideshares are not common carriers. A81-89.

A 2-1 majority of the panel then found that Section 25(e) was not unconstitutional special legislation because, although Section 25(e) discriminates in favor of ridesharing carriers, the majority could conceive rational bases for such discrimination. A89-99. Specifically, the majority said "the General Assembly could rationally find that the different business model and technology employed by the ridesharing industry in delivering its services

---

6 The Illinois Attorney General was timely advised of the constitutional issue and, at that time, declined to intervene to defend Section 25(e). SR266; SR268.

warrants the differing regulatory treatment." A91. The panel further held that the viability of the Three-Readings Rule challenge was "a question only the supreme court can answer." A101.

Justice Robert Gordon dissented from the majority's special legislation holding. Recognizing this as the first case in the nation to challenge a statute of this kind as unconstitutional special legislation, and the first case to consider whether rideshare carriers should be exempt from common carrier liability, Justice Gordon found no basis for either specially protecting rideshare carriers from vicarious liability or for discriminating against women raped by rideshare drivers. A101-07. This appeal followed.

C. The repeal of the TNPA and the legislature's attempts to revive the statute

The TNPA was repealed by its own terms on June 1, 2020. 625 ILCS 57/34. On June 12, 2020, the General Assembly purported to revive the statute for one year by retroactively amending the repeal date to June 1, 2021. Pub. Act 101-639, § 40 (eff. June 12, 2020) (amending 625 ILCS 57/34); *see also* 5 ILCS 70/3 (prohibiting attempts to revive repealed statutes through amendment). This occurred while the appeal below was pending and after briefing closed. Jane filed a motion to supplement authority notifying the appellate court of the repeal and the parties agreed that, regardless of whether the retroactive amendment was effective, the TNPA's repeal status did not impact the case. The appellate court agreed that the status of the TNPA's had no retroactive effect on Jane's claims or Lyft's defenses. A82, n.4.

Following the grant of Jane's petition for leave to appeal to this Court, the General Assembly passed another act, this time to state that its prior extension of the TNPA to June 1, 2021, was effective. Pub. Act 101-660 (eff. April 2, 2021) (citing 5 ILCS 70/1).

On May 20, 2021, the legislature passed Senate Bill 2183, which, if signed into law, would extend the TNPA to January 1, 2023. When doing so, the sponsor of this latest extension explained on the House floor that "[t]he intent of this bill is solely to extend the sunset of the Act by 18 months to allow the [Supreme] Court ample time to consider the issue [of the TNPA's constitutionality]; it is not the intent of the bill to guide, interrupt, or intervene in any way with the Court's proceedings on the merits of the case."[7]

ARGUMENT

This case concerns a deeply troubling abuse of legislative power. In a statute purportedly designed to protect passenger safety, one sentence, buried deep within the text, and never discussed by the legislature in committee or floor debate, states that rideshare companies like Lyft "are not common carriers … as defined by applicable State law, nor do they provide taxicab or for-hire vehicle service." 625 ILCS 57/25(e). Lyft argues that this is a cryptic grant of immunity for rideshare carriers from vicarious liability. If Lyft is right, then this provision is a flagrant violation of the constitutional prohibition

[7] Official transcript remains pending. Statement obtained by the Illinois Trial Lawyers Association's floor observer.

against special legislation. Ill. Const. 1970, art. IV § 13. As the appellate court recognized, there is no question, and Lyft has never denied, that Section 25(e) represents deliberate economic discrimination. A90. The provision unreasonably favors rideshare carriers while discriminating against their competitors and innocent victims of sexual assault like Jane.

But it is not only the substance of this statute that is disquieting. The manner of the TNPA's passage represents an indisputable violation of the Constitution's Three-Readings Rule and the legislature's open disregard for the warning of this Court that the legislature must abide by that rule or risk judicial intervention. Ill. Const. 1970, art. IV § 8(d); *see, e.g.*, *Geja's Café v. Metro. Pier & Expo. Auth.*, 153 Ill. 2d 239, 260 (1992). Further, these constitutional violations must be viewed in tandem to understand the full gravity of the legislature's actions. A constitutional requirement designed to ensure transparency and deliberation was violated in order to pass a law that, according to Lyft, is meant to deprive sexual assault victims of their most effective—and perhaps only—civil remedy.

Jane asks this Court to strike down as unconstitutional Section 25(e), or the TNPA as a whole, in defense of constitutional mandates designed to protect against such legislative favoritism and chicanery, in defense of the safety of Illinois' ridesharing public, in defense of the many Illinois residents who have been (and will be) sexually assaulted by rideshare drivers, and in defense of this Court's role in our constitutional system.

However, in deference to the constitutional avoidance doctrine, this appeal can be resolved without addressing these constitutional questions. *See Mulay v. Mulay*, 225 Ill. 2d 601, 607 (2007) (courts should generally first rely, when possible, on nonconstitutional grounds to decide cases). This is because Jane has a common law right to hold Lyft vicariously liable for the conduct of its driver, and if Section 25(e) is an immunity provision, then it is a fundamentally flawed and legally ineffective immunity provision. Illinois law holds to a high standard any legislative attempt to extinguish common law rights and remedies. To do so, the legislature must be explicit and use plain and clear language conferring immunity. *McIntosh v. Walgreen Boots Alliance, Inc.*, 2019 IL 123626, ¶ 30. The legislature may not use cryptic or indirect language of the kind found in Section 25(e) to confer immunity. The TNPA consequently provides Lyft no refuge from its common law responsibilities.

I. Standard of review

"By definition, certified questions are questions of law subject to *de novo* review." *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 21. The existence of a duty presents a legal question reviewed *de novo* (*Suchy v. City of Geneva*, 2014 IL App (2d) 130367, ¶ 19), as is the construction of a statute (*Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11), and the interpretation and application of the Illinois Constitution (*Hooker v. Ill. St. Bd. of Elections*, 2016 IL 121077, ¶ 21).

II. Rideshare carriers are subject to the same high duty of care as common carriers under the common law, regardless of TNPA Section 25(e)

The first certified question asks whether Section 25(e) of the TNPA necessarily precludes rideshare companies from being held to the same high duty of care as common carriers under the common law. The answer is no. Rideshare carriers owe the same duty of care as their more traditional passenger transportation competitors under Illinois common law and Section 25(e) does nothing to change that conclusion.

A. Illinois common law holds passenger transportation carriers to the highest duty of care when they exercise control over their passengers' safety

The shortest path to resolving this appeal is to recognize that Illinois common law already holds passenger transportation carriers like Lyft to the highest standard of care, regardless of whether the rideshare carriers are common carriers, and Section 25(e) is not drafted in a manner sufficient to abrogate that common law duty. To understand why this is the case, it is necessary to review the policy that has driven the application of the highest duty of care in Illinois for well over a century. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 441 (2006) ("the existence of a duty turns in large part on considerations of public policy"); *Simpkins v. CSX Transp., Inc.*, 2012 IL 110662, ¶¶ 17-18 (same).

The *respondeat superior* doctrine provides that employers and principals may be held liable for the torts of their employees and agents if those wrongs are committed within the scope of employment. *Wright v. City of*

Danville, 174 Ill. 2d 391, 405 (1996). Our courts have traditionally considered acts of sexual assault to be beyond the scope of employment and agency, relieving employers and principals of vicarious liability. *Deloney v. Bd. of Educ. of Thornton Twp.*, 281 Ill. App. 3d 775, 783-85 (1st Dist. 1996). This is because courts have, as a matter of policy, generally viewed serious crimes as unusual and thus unforeseeable in an employment setting. *Wright*, 174 Ill. 2d at 405. Given the prevalence of sexual assaults committed by rideshare drivers on passengers, and thus the increasing foreseeability of such attacks, continued reliance on this policy assumption in this context is at least questionable.

Illinois courts have nonetheless understood the need for, and thus made room for, important exceptions to this general rule of non-liability. These exceptions include certain "special relationships" recognized under the common law: the common carrier-passenger, innkeeper-guest, custodian-ward, and business invitor-invitee relationships. *Gress v. Lakhani Hosp., Inc.*, 2018 IL App (1st) 170380, ¶ 15 (citing *Iseberg v. Gross*, 227 Ill. 2d 78, 88 (2007), and Restatement (Second) of Torts § 314A (1965)); *see also Cross v. Chicago Housing Auth.*, 74 Ill. App. 3d 921, 925 (1st Dist. 1979) (recognizing additional "special relationships" based on defendants' relationships with tortfeasors rather than defendants' relationships with plaintiffs). Where these special relationships exist, our courts hold defendants to "'the highest degree of care.'" *Id.* ¶ 16 (quoting *Krywin v. Chicago Transit Auth.*, 238 Ill. 2d 215, 226-27 (2010)). Indeed, "[t]hese special relationships give rise to an *affirmative duty*

to aid or protect another against an 'unreasonable risk of physical harm.'" *Id.* (quoting *Simpkins*, 2012 IL 110662, ¶ 20) (emphasis original).

This highest duty of care is "premised on a relationship between the parties that is independent of the specific situation which gave rise to the harm." *Id.* (citing Restatement (Second) of Torts § 314A cmt. b, and *Bogenberger v. Pi Kappa Alpha Corp., Inc.*, 2018 IL 120951, ¶ 33). "The key to imposing a duty based on a special relationship is that the defendant's relationship with either the tortfeasor or the plaintiff 'places the defendant in the best position to protect against the risk of harm.'" *Id.* (quoting *Bogenberger*, 2018 IL 120951, ¶ 39) (citation omitted).

Illinois public policy has long held that the highest duty of care is owed and a special relationship exists when one party assumes control over the safety of another party. *See*, *e.g.*, *John Morris v. Southworth*, 154 Ill. 118, 125-26 (1894) (stating that because "[p]assengers are compelled to rely on the [common] carrier for their personal safety … public policy requires that the carrier must be held to the utmost possible care and diligence" and is "responsible for the slightest neglect"). This is the common policy that marks out the common carrier-passenger, innkeeper-guest, and custodian-ward relationships as "special"; it is the recognition that the highest duty of care is owed when "the ability of one of the parties to provide for his own protection has been limited in some way by his submission to the control of the other." *Hills v. Bridgeview Little League Ass'n*, 195 Ill. 2d 210, 244 (2000) (internal

quotation marks omitted). In such scenarios, "a duty should be imposed upon the one possessing control (and thus the power to act) to take reasonable precautions to protect the other one from assaults by third parties which, at least, could reasonably have been anticipated." *Id.* (internal quotation marks omitted).

Our courts thus consistently explain in the context of the common carrier-passenger relationship that the "high duty owed by a common carrier to its passengers is *premised* on the carrier's *unique control over its passengers' safety*." *McNerny v. Allamuradov*, 2017 IL App (1st) 153515, ¶ 76 (emphasis added) (internal quotation marks omitted); *accord Manus v. Trans States Airlines, Inc.*, 359 Ill. App. 3d 665, 669 (5th Dist. 2005); *Fillpot v. Midway Airlines*, *Inc.*, 261 Ill. App. 3d 237, 243 (4th Dist. 1994). This principle is centuries old, deriving from English and early American common law. *Anderson v Chicago Transit Auth.*, 2019 IL App (1st) 181564, ¶¶ 37, 48. "[T]he reason for this high standard is that the carrier 'has, for the time being, committed to [its] trust the safety and lives of people'" who have no "'power to guard against danger,'" and thus "'look to [the carrier] for safety in their transportation' such that 'as far as human foresight and care can reasonably go, [the carrier] will transport them safely.'" *Id.* ¶ 48 (quoting *Dewort v. Loomer*, 21 Conn. 245, 235-54 (1851)).

The highest duty of care is imposed on innkeepers and custodians for the exact same policy reason. *Gress*, 2018 IL App (1st) 170380, ¶ 16 (citing

Hills, 195 Ill. 2d at 244) (the highest duty applies to innkeepers because guests limit their ability to protect themselves by submitting to the innkeeper's control); *Anderson*, 2019 IL App (1st) 181564, ¶ 49 ("the heightened or broadened duty seems to apply to situations where the defendant, like the common carrier or innkeeper, has a greater degree of control over the plaintiff passenger or guest"); *Stearns v. Ridge Ambulance Svc., Inc.*, 2015 IL App (2d) 140908, ¶ 18 ("[a] special relationship exists where, *inter alia*, one voluntarily takes custody of another so as to deprive the other of his normal opportunities for protection").

The policy underlying the business invitor-invitee special relationship is expressed somewhat differently, but is ultimately consistent with this notion. The common law did not traditionally recognize a special relationship between commercial landowners and their patrons because they considered the level of control exercised by the invitor over the invitee's safety inadequate. *Hills*, 195 Ill. 2d at 244-45. Courts nonetheless grew to recognize this relationship as "special" because "'places to which the general public are invited might indeed anticipate, either from common experience or known fact, that places of general public resort are also places where what men can do, they might'" and so "'[o]ne who invites all may reasonably expect that all might not behave, and bears responsibility for injury that follows the absence of reasonable precaution against that common expectation.'" *Id.* at 245-46, 250-51 (quoting *Feld v. Merriam*, 485 A.2d 742, 745 (1984), and adopting Restatement (Second)

of Torts §§ 302B, cmt. e & 344, cmt. f). Business invitors may not have the same direct control over the safety of their invitees as common carriers, innkeepers, and custodians, but they have enough control over the situation to warrant the imposition of the highest duty.

Illinois law thus considers these relationships "special" and warranting the imposition of the highest duty of care because in all of them the dominant party has control over the dependent party or their surroundings and is thereby in the best position to guard the dependent party against harm. This same dynamic defines the relationship between rideshare carriers and their passengers. Just as taxicab passengers entrust their safety to cab drivers, rideshare passengers entrust their safety to rideshare drivers. By the same token, taxicab drivers and rideshare drivers are equally capable of harming their passengers, or saving their passengers from harm, in all the same ways. Lyft has never denied this, and both the circuit and appellate courts said that, but for Section 25(e), they would likely find rideshare carriers to be common carriers subject to the highest duty of care. A9; A90.

B. Illinois common law further holds that relationships beyond the traditional four special relationships can trigger the highest duty of care

The common law is by nature steady, but not static. It is meant to progress with the society it serves. Given the shared policy that gave rise to the special relationships, it was and remains inevitable that additional relationships sharing the same policy justification would and will be

recognized. The addition of the business invitor-invitee relationship provides a ready example, but nowhere is it better demonstrated than in the ever-changing passenger transportation sector. Stagecoaches (*Rathburn v. Ocean Accident & Guar. Corp.*, 299 Ill. 562 (1921)), railroads (*Davis v. South Side Elevated R.R. Co.*, 292 Ill. 378 (1920)), taxicabs (*Jackie Cab Co. v. Chicago Park Dist.*, 366 Ill. 474, 477 (1937)), elevators (*Cobb v. Marshall Field & Co.*, 22 Ill. App. 2d 143 (1st Dist. 1959)), airplanes (*McCusker v. Curtiss Wright Flying Svc.*, 269 Ill. App. 502, (1st Dist. 1933)), and more, were all in time determined to be common carriers owing their passengers the highest duty of care. As technologies developed, the special relationship doctrine necessarily expanded to stay responsive and relevant. This is not only true of the type of vehicles recognized as common carriers, but also of the type of carriers recognized as special.

Seven years before the TNPA became law, the appellate court held in *Green v. Carlinville Community Unit School District No. 1*, 381 Ill. App. 3d 207 (4th Dist. 2008), that a passenger transportation carrier that did not meet the legal definition of a common carrier, but performed the same basic function of transporting individuals, and exercised similar control over passengers' safety, owed the highest duty of care to its passengers. In *Green*, a public school bus driver sexually assaulted a student passenger. The school district argued, as Lyft does here, that it could not be held liable for a sexual assault committed by its driver because the assault was beyond the scope of the driver's

employment and because it was not a common carrier. *Id.* at 210. The trial court agreed, entering summary judgment for the school district. *Id.*

The appellate court in *Green* had a different opinion. Although it found that the school district was not a common carrier because it was not legally required to transport any member of the public who applied for passage, the school district was nonetheless "performing the same basic function [as a common carrier], transporting individuals." *Id.* at 212-13. Further, "[l]ike a passenger on a common carrier, a student on a school bus cannot ensure his or her own personal safety but must rely on the school district to provide fit employees to do so." *Id.* at 213. The appellate court concluded from these similarities that school districts operating buses owe their passengers the highest duty of care because they transport passengers and because, in doing so, they control the safety of those passengers. *Id.*

Although the *Green* court's specific application of the highest duty of care to school buses was then new to Illinois, it was entirely in keeping with the long-standing policy governing the application of the highest duty discussed above. It also adhered to the approach long taken by the Restatement (Second) of Torts, which explains that the four special relationships "are not intended to be exclusive, and are not necessarily the only ones in which a duty of affirmative action for the aid or protection of another may be found." Restatement (Second) of Torts § 314(A), cmt. b. The Restatement recognizes that "[t]he law appears … to be working slowly toward a recognition of the duty

to aid or protect in any relation of dependence." *Id.*; *see also Stearns*, 2015 IL App (2d) 140908, ¶ 18 (observing that "in addition to the four [special relationships] that have been recognized" by the courts, "there may be other special relationships that give rise to a duty"). *Green*, which recognized that a special relationship existed for passenger transportation carriers that are not common carriers, but perform the same function and exercise the same type of control over passenger safety, was simply another step in this progression.

Lyft cannot credibly deny that it is in essentially the same business of transporting individuals as its traditional competitors and, as mentioned above, both the trial and appellate courts noted that rideshare carriers would likely be classified as common carriers but for Section 25(e). A9; A90. Indeed, rideshare carriers much more closely resemble common carriers like taxicabs than school buses, and yet school buses owe their passengers the highest duty of care. Lyft similarly has not and cannot credibly deny that the dynamic of dependence and control that exists between common carriers and their passengers also exists between rideshare carriers and their passengers. Rideshare carriers are in these important respects the same as their traditional competitors.

Several years after *Green*, in *Doe v. Sanchez*, 2016 IL App (2d) 150554, the appellate court identified a different scenario in which the highest duty of care applied to a passenger transportation carrier that was not a common carrier. *Sanchez* was another sexual assault case involving a student and bus

driver, but this time the driver was employed by a private bus company rather than a public school district. Although, as in *Green*, the bus company was not a common carrier, the appellate court drew the same parallel between common carriers and private bus operators in that "the high duty of care a common carrier owes its passengers is premised on the carrier's unique control over its passengers' safety" and "[l]ikewise, a school bus driver is in unique control over the safety of students" while driving them. *Id.* ¶ 39. The court added that the heightened duty owed in such scenarios is "nondelegable," obviating the need to consider whether an employee or agent was acting within the scope of employment when committing a tort or crime. *Id.* ¶¶ 46, 50-52.

Adopting Lyft's argument below, the appellate court here distinguished *Green* and *Sanchez* on the basis that they both involved school children. A85-86. That was an unduly narrow reading of this precedent. The appellate court in *Green* was explicit in explaining the basis for its holding as the comparable inability of passengers in both the common carrier and school bus settings to "ensure [their] own personal safety," and their resulting reliance on carriers to provide safe transport. *Green*, 381 Ill. App. 3d at 213. While the *Green* court took into account that the victim was a child when considering the dynamic of control and dependence at issue, doing so was a factor in its analysis, not the framework for its rationale.

In finding otherwise, the appellate court here pointed to the *Green* court's statement that its holding was "'limited to the common-law duty school

districts owe student passengers while the students are being transported on a school bus.'" A85 (quoting *Green*, 381 Ill. App. 3d at 214). However, the appellate court ignored the *Green* court's next sentence, which was the only other sentence in the paragraph and subsection, stating that its holding "neither enhances nor weakens the duties school district already owe their students in other circumstances." 381 Ill. App. 3d at 214. Read together, this shows that the *Green* court was not limiting the scope of the rationale underlying its holding, but only the impact of that holding on other preexisting duties owed by school districts to students. The appellate court below thus took that statement out of context and misconstrued its meaning.

The appellate court here also attempted to distinguish *Green* by pointing to the earlier court's statement that it would be "'ludicrous'" to "'hold that adults on public transportation buses are entitled to more protection than the most vulnerable members of our society—namely, children on a school bus.'" A85 (quoting *Green*, 381 Ill. App. 3d at 213). This too was taken out of context. That statement, coming after the court's holding "we conclude that school districts that operate school buses owe their students the highest degree of care to the same extent as common carriers owe their passengers the highest degree of care" (*id.*), makes clear that it was *dictum*, insufficient in itself to distinguish this case from *Green*. *See Reece v. Bd. of Educ. of City of Chicago*, 328 Ill. App. 3d 773, 783 (1st Dist. 2002) (*dictum* is insufficient to distinguish otherwise applicable authority).

Further, while the appellate court in *Sanchez* emphasized the importance of public policy favoring the protection of children, it also relied heavily on *Green* while misconstruing its holding. *Sanchez*, 2016 IL App (2d) 150554, ¶¶ 28-35. The *Sanchez* court described the "core rationale" of *Green* as the policy decision that "school children require the highest standard of care in their transport." *Id.* ¶ 30. As discussed above, that was an inaccurate summary of *Green*. The *Sanchez* court thus essentially staked out its own reason for holding a non-common carrier passenger transportation provider to the highest duty of care, choosing to emphasize a different policy supporting the imposition of that duty. *Sanchez* nonetheless illustrates the continued expansion of the highest duty of care.

Green demonstrates that years before the TNPA was enacted, Illinois common law recognized that a passenger transportation carrier that is not a common carrier, but performs the same basic function as a common carrier and exercises similar control over passenger safety, may be held to the highest duty of care, even though that relationship is not enumerated in the four special relationships. With no abrogating decision from this Court or conflicting decision from another district of the appellate court, this was the law of Illinois when the TNPA was enacted in 2015, and the legislature is presumed to have been aware of it. *See Ill. Landowners Alliance, NFP v. Ill. Commerce Comm'n*, 2017 IL 121302, ¶ 44 (courts presume the legislature is aware of their

published decisions); *People v. Carpenter*, 228 Ill. 2d 250, 259 (2008) (decisions of an appellate court are binding precedent on all circuit courts).

C. Section 25(e) does not extinguish Jane's common law rights and remedies

If Section 25(e) of the TNPA was meant to abrogate Jane's common law right and remedy to hold Lyft vicariously liable for the actions of its driver, then it failed to do so as matter of law. The standards governing legislative abrogation of the common law are well established. As this Court has explained, "[c]ommon law rights and remedies remain in full force in this state unless *expressly* repealed by the legislature or modified by court decision. A legislative intent to alter or abrogate the common law must be *plainly* and *clearly* stated." *McIntosh*, 2019 IL 123626, ¶ 30 (emphasis added).

Section 25(e) cannot be reasonably described as using plain and clear language to expressly repeal the common law rights and remedies discussed above. The provision says nothing about common law rights and remedies, nothing about lawsuits, and nothing about providing immunity to rideshare carriers. It is found in a larger section of the act addressing "Safety," not liability or immunity, and it says only that rideshares are not common carriers. 625 ILCS 57/25(e). If this language was meant to grant rideshare carriers immunity from vicarious liability in derogation of the common law, it used unacceptably cryptic and indirect language to that end.

To be sure, Section 25(e) could have been drafted as a proper immunity provision had that been the legislature's intention. The legislature certainly

knows how to correctly draft immunity laws. For example, the Local Governmental and Governmental Employees Tort Immunity Act plainly and clearly states that "[a] local public entity is not liable for an injury resulting from an act or omission of its employee." 745 ILCS 10/2-109. Section 25(e) falls far short of this example and this Court's standard for statutes meant to abrogate common law rights and remedies.

This raises the question of the purpose of Section 25(e), a question this Court can but need not answer. Section 25(e) does not say what Lyft needs it to say in order to escape liability. That can and should be the end of the inquiry. Following Lyft's lead, the appellate court said that Section 25(e) made the intent of the legislature to confer immunity clear. A88-89. How? The appellate court did not explain why the language of Section 25(e) constitutes a clearly and plainly stated grant of immunity. The appellate court identified no other immunity provision worded in such cryptic language and upheld on review as a sufficient grant of immunity. The court likewise pointed to no legislative history indicating that the legislature ever considered, or even mentioned, Section 25(e) as a grant of immunity—there is none.

Rather than explain why it considered Section 25(e) to be a plainly and clearly stated express repeal of Jane's common law rights and remedies, the appellate court said it was obligated to interpret the statue "so that no part is rendered meaningless or superfluous." A88 (quoting *People v. Simpson*, 2015 IL 116512, ¶ 29). However, that rule of construction, properly stated, is that "if

possible" courts should avoid statutory constructions that render any term superfluous or meaningless. *1550 MP Road LLC v. Teamsters Local Union No. 700*, 2019 IL 123046, ¶ 31; *accord People ex rel. Ryan v. Agpro, Inc.*, 214 Ill. 2d 222, 227 (2005); *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 232 (2001). Sometimes poorly drafted statutory language is unavoidably meaningless. This Court's specific rule that common law rights and remedies must remain "in full force … unless expressly repealed" by "plainly and clearly stated" legislative language renders the appellate court's application of the more general and less consequential rule of construction untenable.

This does not mean that Section 25(e) is necessarily meaningless. As Lyft's own *amicus* explained below, rideshare carriers provide transportation only to those who download their app, sign-up for their service, and agree to their terms and conditions. Ill. Chamber of Commerce App. Ct. *Amicus* Br. at 7. So long as rideshare carriers do not discriminate based on race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity, they are free to deny passage to anyone they choose. 625 ILCS 57/20(b). A common carrier, in contrast, must "carry all persons indifferently who may apply for passage, so long as there is room and there is no legal excuse for refusal." *Austin Bros. Transfer Co. v. Bloom*, 316 Ill. 435, 437 (1925). Rather than a failed immunity provision, Section 25(e) can easily and reasonably be read to confirm that rideshare carriers "are not

common carriers" because they are not required to carry all persons indifferently who apply for passage.

The appellate court rejected this interpretation, pointing to the aforementioned anti-discrimination provision, and others like it in the TNPA, protecting certain classes of persons. A87-88. Respectfully, that approach overlooks the definition of a common carrier. If the legislature intended to prohibit rideshare carriers from discriminating against protected classes of persons, it would make sense for them to clarify that such a prohibition did not mean that rideshares were required to carry everyone indifferently who applies for passage. In any event, if Section 25(e) is an enigmatic immunity provision, its lack of plain and direct language prevents it from passing muster.

These gaps in the appellate court's reasoning are especially problematic when considering whether the legislature properly extinguished a right and remedy as important as that at issue here. "The General Assembly's authority to exercise its police power by altering the common law and limiting available remedies is … dependent upon the nature and scope of the particular change in the law." *Best v. Taylor Mach. Works*, 179 Ill. 2d 377, 408 (1997). If Section 25(e) extinguishes the remedy available to sexual assault victims to pursue carriers through vicarious liability, then it represents an immense change in the nature and scope of the law for victims like Jane. "There is universal agreement that the compensatory goal of tort law requires that an injured plaintiff be made whole." *Id.* at 406.

As discussed more below, in cases like this, it is highly unlikely that victims of sexual assault will be able to pursue any meaningful recovery against their attackers. *See infra* 55. The ability to pursue a vicarious liability claim against the carrier will, in nearly every case, be the only way victims might be made whole; not simply through monetary awards, but through the satisfaction of knowing that *all* responsible parties are held to just account before the law.

Jane has a common law right to hold Lyft vicariously liable for the conduct of its driver. The existence of a duty is ultimately a question of policy and the common policy thread defining the kinds of relationships deserving of the highest duty of care are those in which a dominant party accepts control over the safety of a dependent party or their surroundings. There can be no real doubt that when passengers enter rideshare vehicles, they are surrendering control over their safety to the driver. If the law is to have any consistency, that relationship therefore requires the imposition of the highest duty of care. Further, if—as Lyft argues—Section 25(e) is meant to relieve rideshare carriers of that highest duty, then it is far from the kind of express, plain, and clear grant of immunity required by this Court's precedent to extinguish Jane's common law rights and remedies. It therefore matters less what Section 25(e) does say than what it does not say. And it does not say that rideshare carriers are exempted from the responsibilities they owe their

passengers under Illinois common law. The first certified question should therefore be answered in the negative and in Jane's favor.

III. Alternatively, Section 25(e) of the TNPA is an unconstitutional exercise of legislative power

The circuit court's second certified question asks whether the TNPA, including Section 25(e), is "a constitutional exercise of the legislature's power." SR280. The answer is no. Section 25(e) of the TNPA is unconstitutional because it violates the Illinois Constitution's prohibition against special legislation, and because the manner in which the entire TNPA was passed violated the Constitution's Three-Readings Rule. If the Court decides that Section 25(e) successfully extinguished the common law right of passengers assaulted by transportation carriers' drivers to pursue carriers under a vicarious liability theory of recovery, then the Court should strike down Section 25(e), or the entire TNPA, as unconstitutional.

A. Section 25(e) of the TNPA violates the Constitution's ban on special legislation

1. The special legislation clause exists for courts to invalidate legislative favoritism

The Illinois Constitution provides that "[t]he General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const. 1970, art. IV, § 13. The framers intended "[t]he combination of these two sentences [as] an invitation for the courts to scrutinize legislation." Ann M. Lousin, *The Illinois State Constitution: A*

Reference Guide 114 (2010). This Court has accepted that invitation on a number of occasions and in so doing explained that "the Illinois Constitution is not a grant, but a limitation on legislative power." *Best*, 179 Ill. 2d at 391. "It is this court's duty to interpret the law and to protect the rights of individuals against acts beyond the scope of the legislative power." *Id.* at 378.

Although courts begin any constitutional analysis with the presumption that the challenged legislation is constitutional (*id.* at 377), the prohibition against special legislation poses concerns larger than those presented in the typical constitutional challenge. This is because the special legislation clause is "the 'one provision in the legislative articles that specifically limits the lawmaking power of the General Assembly.'" *Id.* at 391 (quoting S. Grove & R. Carlson, *The Legislature,* in Con-Con: Issues for the Illinois Constitutional Convention 101, 103 (1970)). It concerns more than the application of law. It provides a vital check on the lawmaking process itself.

The prohibition against special legislation traces back to the 1870 Constitution, the drafters of which sought to end the legislature's unscrupulous habit of enriching favored persons, groups, and interests at the expense of others. *Id.* at 392. As one delegate to that constitution convention put it, "'[g]overnments were not made … to advance the interest of the few against the many,'" but rather to ensure "'that the weak might be protected from the will of the strong'" and "'that one class or interest should not flourish by the aid of government, whilst another is oppressed with all the burdens.'"

Id. (quoting I Debates and Proceedings of the Constitutional Convention of the State of Illinois 578 (1870) (remarks of Delegate Anderson)).

This limit on legislative power is not merely theoretical or aspirational, but "deeply embedded in the constitutional jurisprudence of this state." *Id.* The prohibition against special legislation thus carries unique and real force in our constitutional system to strike down legislation that "grant[s] to any corporation or association or individual any special or exclusive privilege, *immunity* or franchise." *Grasse*, 412 Ill. at 194 (emphasis added). The clause "expressly prohibits the General Assembly from conferring a special benefit or exclusive privilege on a person or a group of persons to the exclusion of others similarly situated" (*Best*, 179 Ill. 2d at 391); and, importantly, it explicitly instructs the courts to enforce that prohibition because the legislature has proven incapable of policing itself.

Section 25(e) is precisely the kind of legislative favoritism the special legislation clause was designed to quash. If it is, as Lyft argues, an immunity provision carved out only for rideshare carriers, then it is a patent attempt to confer a special economic benefit on rideshare carriers to the detriment of their competitors and passengers. Section 25(e) shifts the consequences of the rideshare industry's failings onto the shoulders of innocent passengers like Jane, demeaning them by relegating them to the status of second-class rape victims.

2. The proper analysis for enforcing the special legislation clause requires more than mere rational basis review

Whether legislation runs afoul of the prohibition against special legislation involves a dual inquiry. Courts first ask whether the statutory provision at issue discriminates in favor of a select group and, if so, whether the classification created by the statutory provision is arbitrary. *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12, 22 (2003). It is often said in these cases that the challenged law is "generally" judged under the same standards applicable to an equal protection challenge. *Id.* This includes the application of the rational basis test, borrowed from equal protection jurisprudence, when no fundamental right or suspect classification is at issue. Under that test, the legislature's actual intent in enacting a law is irrelevant and courts may "hypothesize reasons for the legislation, even if the reasoning advanced did not motivate the legislative action." *Piccioli v. Bd. of Tr. of Teachers' Retirement Sys.*, 2019 IL 122905, ¶ 20. This is the analytical equivalent of shooting an arrow and painting a bullseye around the place where it hits. It has for this reason been characterized as "tantamount to no review at all." *F.C.C. v. Beach Comms., Inc.*, 508 U.S. 307, 323 n. 3 (1993) (Stevens, J., concurring).

Rational basis review is, on its face, inconsistent with the purpose of the special legislation clause. The provision is designed to suppress legislative favoritism. "Favoritism" by definition involves showing "preference," which inherently involves intention. *See* Black's Law Dictionary 683 (9th ed. 2009) (defining "favoritism"). And yet in deciding whether Section 25(e) is special

legislation, the appellate court majority hung their decision not on the legislature's actual intent, but rather on their own invented justifications for the provision, going so far as to refuse to even consider the legislature's stated intent as evidenced by the statute's text and legislative history. A94.

The circumstances that led this Court to begin applying equal protection analysis to special legislation challenges are understandable. "Special legislation confers a special benefit or privilege on a person or group of persons to the exclusion of others similarly situated. It discriminates in favor of a select group without a sound, reasonable basis." *Chicago Nat'l League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 367 (1985). "A denial of equal protection, on the other hand, is different. It is an arbitrary and invidious discrimination that results when government withholds from a person or class of persons a right, benefit or privilege without a reasonable basis for the governmental action." *Id.* "Legislation which confers a benefit on one class and denies the same to another may be attacked both as special legislation and as a denial of equal protection." *Id.* at 367-68. These protections are different but partially overlapping, and because the inclusion of an equal protection clause in the 1970 Illinois Constitution prompted plaintiffs to frequently challenge laws on both special legislation and equal protection grounds, the analyses and standards applied to both provisions began to be addressed as one and the same.

For instance, in *S. Bloom, Inc. v. Mahin*, 61 Ill. 2d 70 (1975), this Court cited *Bridgewater v. Holz*, 51 Ill. 2d 103 (1972), for the proposition that because both the special legislation and equal protection clauses addressed differentiations drawn by the legislature between similarly situated persons, similar standards, including the rational basis test, governed the application of both constitutional provisions. *Mahin*, 61 Ill. 2d at 76-77. However, the Court in *Bridgewater* did not describe special legislation analysis that way. The Court rather said that a statute is constitutional under special legislation analysis "[i]f there is a reasonable basis for the classification, and it bears a reasonable and proper relation *to the purposes of the act and the evil it seeks to remedy*." 51 Ill. 2d at 111 (emphasis added); *see also* Albert M. Kales, *Special Legislation as Defined in the Illinois* Cases, 1 Ill. L. Rev. 63, 66-67, 76 (1906) (analyzing the first several dozen special legislation cases brought before this Court after the special legislation clause was adopted in the 1870 constitution and summarizing the Court's jurisprudence as saying that a law will only pass constitutional muster if it is based on a rational distinction, and if that distinction is embodied in the statute's description and is consistent with the stated purpose of the act).

Even after this Court began to apply rational basis review to special legislation challenges following the inclusion of the equal protection clause in the Constitution, the scrutiny of the Court's actual review usually proved more exacting. The Court has thus said that the special legislation clause

"supplements" equal protection, and it has looked to legislative history when the reason for a classification was—as here—not apparent from the face of a statute. *In re Estate of Jolliff*, 199 Ill. 2d 510, 519 (2002); *Unzicker v. Kraft Foods Ingredients Corp.*, 203 Ill. 2d 64, 86 (2002); *Allen*, 208 Ill. 2d at 25-28; *Grasse*, 412 Ill. at 194; *see also* Lousin, *The Illinois State Constitution: A Reference Guide* at 115 (interpreting *Jolliff* and *Unzicker* to mean that the Court "reserve[es] the power to use Article IV, Section 13 as a means of invalidating legislation that might otherwise pass muster under the equal protection clause").

The Court has further noted that the framers of the 1970 constitution "recognized the value of the prohibition against special legislation" and chose to retain it "even though an equal protection/due process clause was included in the Illinois Constitution for the first time." *Best*, 179 Ill. 2d at 393. The Court has relatedly described its own jurisprudence as having "invalidated legislative classifications under the special legislation clause where they have an artificially narrow focus and which *appear to be designed* primarily to confer a benefit on a particular private group without a reasonable basis." *Id.* at 395 (emphasis added).

This begs several questions about the applicability of rational basis review here. If the prohibition on special legislation "supplements" equal protection, how can their tests for passing constitutional muster be identical? Why would the framers of the 1970 Constitution retain the special legislation

clause if they intended for it to be perfectly coextensive with, and offer no more protection than, the equal protection clause? Why would this Court concern itself with the design and purpose of a statute or its legislative history if rational basis review, under which courts may simply hypothesize legitimate reasons for challenged legislation regardless of the legislature's actual intent, governs the analysis?

Jane respectfully suggests that although this Court has stated that it applies rational basis review when considering whether a statute is unconstitutional special legislation, its review has in most cases actually—and appropriately—been considerably more robust. This should be *especially* so where, as here, the manner of the challenged statute's passage makes clear that the legislature did not follow constitutional procedures required to ensure adequate transparency and deliberation in the lawmaking process. *See infra* 57-60. If the General Assembly is permitted to unconstitutionally hand out favors and discriminate through unconstitutional procedural means used to avoid scrutiny of bills so irrational they would almost certainly not survive an open and honest public debate, then the Constitution's limits on the legislature's lawmaking powers are worthless.

The label one gives this Court's actual scrutiny does not matter as much as the recognition that when considering a special legislation challenge, legislative intent, evidenced by the text of the statute and its legislative history, has been and should be considered over hypothetical, after-the-fact

justifications. Here, when the legislature's intent is weighed in this fuller analytical framework, and unsupported hypothetical justifications like those invented by the appellate court majority are put aside, the unconstitutionality of Section 25(e) is clear. However, the same is true under rational basis review because, quite simply, the State can have no valid reason for adopting a law that incentivizes businesses to put their profits ahead of the physical safety of their patrons—especially in cases of sexual violence.

3. Section 25(e) discriminates in favor of rideshare carriers like Lyft

As to the first step in the dual constitutional inquiry for examining special legislation challenges, there is no dispute that Section 25(e) discriminates in favor of a select group by specially exempting rideshare carriers from common carrier status. Both the circuit court and the appellate court commented that, but for this provision, rideshares would likely be classified as common carriers. A9; A90. Yet Section 25(e) sets rideshare carriers apart, expressly and exclusively exempting them from common carrier status and, as Lyft eagerly argues, exempting them from a high duty of care to passengers. This protection is not afforded to any other passenger transportation carriers, creating a specially favored class to the detriment of their more traditional competitors and to passengers like Jane. As the appellate court said, the court "need not dwell on" this inquiry as "[t]here is no question (and Lyft does not argue otherwise) that section 25(e) discriminates in favor of rideshare companies." A90.

4. Section 25(e) confers a special benefit on rideshare carriers without a reasonable and justifiable basis

i. Section 25(e) is contrary to the stated purpose of the TNPA

"[T]he hallmark of an unconstitutional classification is its arbitrary application to similarly situated individuals without adequate justification or connection to the purpose of the statute." *Best*, 179 Ill. 2d at 396. To identify the presence of such a hallmark in a statute, courts look to the stated purpose of the legislation and consider whether the challenged provision promotes that purpose. *Allen*, 208 Ill. 2d at 29.

Where, as here, the challenged provision says nothing on its face about its purpose, courts will ascertain the intent of the legislature by looking to the broader statute and the legislative history. *Id.* at 25. Because of the hurried and unconstitutional manner in which the TNPA was secreted through the legislature, there is no legislative history on Section 25(e). It was not mentioned in the short floor debate of either chamber. It was not discussed in the committees, where the TNPA sat for less than a day.

This leaves the purpose of Section 25 generally and the TNPA as a whole as a basis for understanding legislative intent. On its face, Section 25 addresses the "safety" of passengers and to that end includes a zero tolerance drug and alcohol policy for drivers (625 ILCS 57/25(a)), a complaint procedure for passengers to use when they suspect a violation of that policy (625 ILCS 57/25(b)), an automatic suspension and investigation requirement for

suspected violations of that policy (625 ILCS 57/25(c)), and a requirement that vehicles meet certain safety and emissions standards (625 ILCS 57/25(d)). Section 25(e) is the final subpart of Section 25 and in no way fits within this passenger "safety" scheme (625 ILCS 57/25(e)). It is a total outlier. The same is true of the TNPA generally, every substantive provision of which (as discussed above) promotes in different ways and to different degrees passenger and public safety and well-being. *See supra* 8-9.

The TNPA's brief legislative history supports this conclusion. When House Amendment No. 1 to SB 2774 was introduced to the chamber by its sponsor, he stated that its purpose was to regulate rideshare carriers in order "to protect our constituent's [*sic*] safety." SR190. When asked by another member to "walk through" the bill's contents and explain it to the chamber, the sponsor gave a list of the TNPA's safety and well-being measures. SR190-91. The sponsor never mentioned another purpose for the law.

Section 25(e) therefore is not just inadequately connected to the purpose of the TNPA, it undermines the stated purpose of the statute by acting as a subtle poison pill allowing rideshare carriers to continue placing profits over passenger safety and well-being.[8]

---

[8] Because Section 25(e) has no bearing on the purpose of the TNPA, its invalidation raises no concerns about its severability from the remainder of the statute. *See People v. Warren*, 173 Ill. 2d 348, 371-72 (1996) (statutory provisions are severable if they are not essentially and inseparably connected to the remainder); *see also* 5 ILCS 70/1.31 (severability statute).

Lyft has and will likely argue again on this point that the Court should consider the "painstaking," "substantive," "detailed," and "extensive legislative deliberations" that went into passing the TNPA. It will then contend that Section 25(e) was part of a thoughtful balancing by the legislature between the need to regulate the rideshare industry and a desire to encourage the growth of that industry in Illinois. To be clear, this is a fiction. Lyft's arguments in this regard are based entirely on the legislative history of a separate and very different bill that *never* became law, and which Lyft opposed: House Bill 4075 (SR112-43 (H.B. 4075, 98th General Assembly (lll. 2014)).

With few if any exceptions, the only thing H.B. 4075, the "Ridesharing Arrangements and Consumer Protection Act," and House Amendment 1 to S.B. 2774, the TNPA, had in common was their general subject matter. H.B. 4075 was a comprehensive regulatory regime that came close to treating rideshare carriers as common carriers, with some exceptions allowed for infrequent, part-time rideshare drivers. Importantly, H.B. 4075 did not contain Section 25(e) or anything like it. And when H.B. 4075 was presented to former Governor Quinn, he vetoed it. SR142-43. The TNPA was then soon passed without any apparent committee work, with only a short debate in one chamber, and without the constitutionally-required three readings on the floor of each chamber. Any discussion by Lyft of a balance that earlier bill was designed to address has no application to the TNPA and, consequently, no application here. Lyft cannot

bootstrap the legislative history of a radically different bill to the TNPA to create the illusion of legislative deliberation and permissible intent.

ii. Section 25(e) is not based on any real and substantial difference between rideshare carriers and their competitors

This Court has made clear that for a special classification to survive it must be "based upon some real and substantial difference in kind, situation or circumstance in the persons or objects on which the classification rests, and which bears a rational relation to the evil to be remedied and the purpose to be attained by the statute." *Grasse*, 412 Ill. at 193-94; *accord Allen*, 208 Ill. 2d at 29. There is, however, no difference between rideshare carriers like Lyft and their traditional common carrier competitors real and substantial enough to justify the discrimination and special treatment embodied in Section 25(e).

Lyft sells rides. It is a passenger transportation company. The provision of transportation services to the public is its core function. As another court has found, rideshares perform the same basic function as taxicabs and while they may use a smartphone app to connect with customers, this is just a new instrument to accomplish the same service that customers and taxicab dispatchers traditionally performed with voice calls and radios. *O'Connor v. Uber Tech., Inc.*, 82 F. Supp. 3d 1133, 1141-42 (N.D. Cal. 2015). Further, taxicabs are very often hailed through apps like Curb (https://mobileapp.gocurb.com/), and the TNPA makes specific provision for taxis to use rideshare carrier apps for hailing purposes. 625 ILCS 57/30(f).

Even if this were not the case, any analysis relying on differences in how rideshares and taxis are hailed rests on a distinction without a difference. The mechanical distinction between raising one's arm or placing a voice call to hail a taxicab and pressing a button on a smartphone to hail a rideshare vehicle is too trivial and insufficient to form the basis of a legal distinction affecting rights as important as those at issue here. *See In re Belmont Fire Protection Dist.*, 111 Ill. 2d 373, 380 (1986) ("[t]o render a statutory classification valid, the classification must be based upon a rational difference of situation or condition found to exist in the persons or objects upon which the classification rests"); *cf. Access Living of Metro. Chicago v. Uber Tech., Inc.*, 351 F. Supp. 3d 1141, 1155 (N.D. Ill. 2018) (in an Americans with Disabilities Act action against Uber, discussing with approval *Morgan v. Joint Admin. Bd.*, 268 F.3d 456, 459 (7th Cir. 2001), for the proposition that it is the good or service being offered to the public for sale that is relevant, not the manner of its sale). Moreover, other common carriers are and have for years been booked almost exclusively through apps and internet webpages; one cannot, for instance, hail an airplane from the street. Other common carriers, including railroads and airlines, also generally operate on a prearranged and contractual basis, just as rideshare companies do, and taxicabs have for many years been available on a prearranged basis via telephone as well.

It cannot be overlooked when considering this issue that, as Jane alleges, beyond the doors of the courthouse Lyft directly compares itself to

taxicab services in its marketing campaigns, describing its service as a safe alternative to taxis, providing "a ride whenever you need one," and "your friend with a car." *See supra* 5-6; SR213-20. In fact, Uber first called itself "UberCab," leaving no ambiguity as to what it was meant to be. Alec Scott, *Co-founding Uber made Calgary-born Garrett Camp a billionaire, Canadian Business* (Nov. 19, 2015), https://www.canadianbusiness.com/lists-and-rankings/richest-people/2016-garrett-camp-uber/. Of course, when in courtrooms, Lyft disclaims these kinds of comparisons.

The point is that Lyft sells rides. It is as much in the business of selling rides as taxicabs, railroads, bus companies and airlines. The fact that Lyft sells its rides through a newer technology does not change this reality. As both the circuit and appellate courts commented, Lyft operates much like a common carrier and, in the absence of the TNPA, would likely be found to be a common carrier. SR279; A9; A90. At bottom, there are no real and substantial differences between rideshare carriers and their more traditional competitors sufficient to justify the unique preference shown in Section 25(e).

This is not to say that rideshare carriers have not been treated differently than their traditional competitors in other contexts. In *Illinois Transportation Trade Association v. City of Chicago*, 839 F.3d 594 (7th Cir. 2016), the Seventh Circuit rejected an equal protection claim brought by taxicab companies and drivers against the City of Chicago, challenging an ordinance the plaintiff-taxicab drivers argued provided comparatively lax

regulation of rideshare carriers. The district court agreed that the ordinance could constitute an equal protection violation, but the Seventh Circuit did not, holding there are sufficient differences between taxicabs and rideshares to justify different municipal regulatory schemes. *Id.* at 598.

However, the Seventh Circuit's non-binding decision in *Illinois Transportation* is distinguishable and application of its rationale unsound here. First, as discussed above, the equal protection challenge there at issue was considered under the rational basis test, whereas this Court's analysis of special legislation challenges is considerably more probing. Further, the issue presented in *Illinois Transportation* was whether *any* regulatory treatment of rideshare carriers lesser than the regulatory treatment of taxicab companies was an equal protection violation. *Id.* at 597-98. Jane's claim here is different and based on the assertion that exempting rideshare carriers from common carrier status and/or the highest duty of care violates the prohibition against special legislation. Jane does not claim that any difference in regulation between taxicabs and rideshares is baseless, only that this one—highly impactful—difference is unreasonable, irrational, and unjustified.

Further, the Seventh Circuit's reasoning in *Illinois Transportation* is flawed and based on faulty information. In rejecting the claimed equal protection violation at issue in that case, the Seventh Circuit said that a "major difference" between ridesharing and taxicab companies "is that customers, rather than being able to hail an Uber car, must sign up with Uber before being

able to summon it, and the sign up creates a contractual relationship" between the company and the passenger. *Illinois Transportation*, 839 F.3d at 598. The court said that the nature of that relationship gave the city reason to regulate rideshare carriers differently than taxicabs because the contract, rather than municipal ordinances, governed the relationship at issue. *Id.*

However, the existence of a contractual relationship has little or no bearing on whether there is a reasonable or rational basis for exempting rideshare carriers from common carrier status. Illinois law has long recognized the existence of contractual relationships between common carriers and their passengers. *See*, *e.g.*, *Stack v. Reg'l Transp. Auth.*, 101 Ill. 2d 284 (1984) (finding a contractual relationship existed between Metra and monthly train pass passengers). As a general matter a "carrier" is defined as "[a]n individual or organization (such as a ship-owner, a railroad, or an airline) that *contracts* to transport passengers or goods for a fee," with common carriers listed as a subset thereof. Black's Law Dictionary 242 (9th ed. 2009) (defining "carrier" and "common carrier") (emphasis added). The existence of a contractual relationship between a transportation provider and passenger is, if anything, often indicative of common carrier status, not a reason to distinguish rideshares from common carriers. Moreover, the contested relationship at issue here is governed by statute—the TNPA.

The *Illinois Transportation* court relatedly raised as a rational basis for differing regulatory regimes the fact that taxicabs can be hailed from the

street, whereas rideshares must be hailed through an app. *Illinois Transportation*, 839 F.3d at 598. The appellate court majority in this case also relied on this perceived difference in their justifications for Section 25(e). A90-91. Both courts, however, failed to explain why this difference matters in the constitutional analysis; that is, why this difference is substantial enough to excuse the favoritism embodied in Section 25(e).

This kind of problematic omission characterizes the appellate court majority's entire analysis on the special legislation question in this case. A court considering a special legislation challenge "must determine whether the classification created … [is] based upon reasonable differences in kind or situation, and whether the basis for the classification is related to the evil to be remedied." *Best*, 179 Ill. 2d at 395. Even if the majority had tied this difference to the problem the TNPA was meant to redress, this distinction is, as discussed above, one without any meaningful difference. *See supra* 46-48. The proper focus should not be on such inconsequential mechanical differences, but rather on the larger question of what these transportation companies actually do.

The same is true of the other distinctions between taxicabs and rideshares discussed in *Illinois Transportation* and relied on by the appellate court majority here. For instance, both of those courts noted that passengers of rideshare companies receive information in advance (if only by a matter of minutes) about their drivers; specifically, the driver's name, photograph, and

vehicle description. A91; *Illinois Transportation*, 839 F.3d at 598. Both courts neglected to note that—as anyone who has ever taken a ride with Lyft or Uber knows—passengers only obtain that information once they have agreed to accept and pay for their ride.

Regardless, and again, both the Seventh Circuit and the majority below failed to offer any explanation for the relevance of this point (which assumes the passenger is not using an app to hail a taxi). The vehicle description is used to ensure a driver and passenger are able to identify one another. A photograph will tell a passenger only the driver's race, sex, and general age. Unless the courts were suggesting that it is rational for passengers to make safety decisions based on stereotypes about a person's race, sex, or age, or vehicle type, these differences do nothing to justify exempting rideshare carriers from the highest duty of care.

The appellate court majority likewise found that the legislature could rationally conclude that these safety features employed by rideshare carriers "provide additional protection for passenger safety and thus lessen the need to impose on [them] the same degree of vicarious liability applicable to common carriers such as taxicabs." A95. This finding too lacks any factual foundation. Indeed, one might reasonably assume that the terrible facts of this case, echoing with the shared experiences of thousands of other women, would inevitably lead one to the opposite conclusion about the sufficiency of rideshare carriers' supposedly superior safety measures.

The appellate court majority below also said that the differing business models between rideshare carriers and taxicabs justified the former's special protection. A17. Once again, the majority failed to explain how any such perceived differences are relevant to the constitutional inquiry. They simply noted the difference, particularly the fact that rideshare carriers frequently employ part-time drivers and rideshare drivers own their vehicles, calling this latter point "significant." *Id.* The majority added that rideshares carriers also serve "areas that are not well served by traditional taxicabs." *Id.*

The dissenting justice did not find these arguments convincing, finding that, if anything, rideshare carriers' reliance on non-professional drivers "demonstrates that it is *unreasonable* for the General Assembly to weaken the protections given to passengers" and, if anything, this fact "would suggest that TNCs should be required to assume even *more* responsibility for [their drivers], not less, to ensure passengers safety." A105-06 (emphasis original). To this it may be added that taxicab companies often do not own the vehicles in their affiliation. *See Jacobs v. Yellow Cab Affiliation, Inc.*, 2017 IL App (1st) 151107, ¶ 4 (explaining that Yellow Cab does not own vehicles, cab licenses, or even employ drivers).

As to the majority's point concerning access to personal transportation in underserved areas, certainly those living in such communities are deserving of the same physical and legal protections as those living in areas better-served by taxicabs. It is manifestly unreasonable to conclude otherwise and, therefore,

unreasonable to conclude that rape without a meaningful remedy is simply the price to be paid for improved access to personal transportation.

Lastly, the appellate court majority below acknowledged that passenger safety and well-being was a purpose for enacting the TNPA, but said they believed the statute had another purpose as well; namely, "creating a regulatory environment that would allow the then-nascent ridesharing industry to flourish in Illinois, bringing added competition and innovation to the transportation services market." A91-94. This was a theme running throughout the majority's decision. The problem with this belief is that, as with the other bases for the majority's decision, it finds no foundation in the TNPA or its legislative history. As discussed above, passenger safety and well-being was the only stated purpose of the statute.[9] The majority's reasoning is only possible if the Court ignores these facts in favor of applying theoretical justifications; that is, if the Court simply defers to the legislature, allows it police itself, and thereby engages in "no review at all." *Beach Comms.*, 508 U.S.

---

[9] It bears mention that the unrestrained operations of rideshare carriers in Illinois have not fostered competition, but—even before the TNPA was enacted—crippled taxicab carriers, nearly 40% of which in Chicago are small, family-run businesses. *See James Bradach, Run Off The Road: Chicago's Taxi Medallion Foreclosure* Crisis, AFSCME/AFL-CIO (2017), (https://news.wttw.com/sites/default/files/article/file-attachments/Medallion%20Report%20%28FINAL%29_0.pdf; Evan Garcia, *Chicago's Taxi Industry Is In Crisis: Can It Be Saved?*, WTTW (June 13, 2017) (video) (https://news.wttw.com/2017/06/13/chicago-s-taxi-industry-crisis-can-it-be-saved); Josh Barro, *Under Pressure From Uber, Taxi Medallion Prices Are Plummeting*, N.Y. Times (Nov. 27, 2014) (https://news.wttw.com/2017/06/13/Chicago-s-taxi-industry-crisis-can-it-be-saved).

at 323 n. 3. But even if one does that, the majority's reasoning is irrational unless one accepts the unacceptable: that the State has a legitimate interest in incentivizing businesses to put profits ahead of the physical safety of their patrons, even in cases of sexual violence.

iii. The natural and reasonable effect of Section 25(e) deprives victims like Jane of any meaningful recovery

When evaluating a statutory provision challenged as special legislation, "the court must consider the natural and reasonable effect of the legislation on the rights affected by the provision" to determine if it is constitutionally supportable. *Best*, 179 Ill. 3d at 394. In cases where challenged legislation arbitrarily conferred a special benefit by insulating defendants from fully compensating plaintiffs for wrongs, this Court has not hesitated in striking that legislation down as violative of the special legislation clause. *See*, *e.g.*, *Wright v. Central DuPage Hosp. Ass'n*, 63 Ill. 2d 313, 329-30 (1976); *Grace v. Howlett*, 51 Ill. 2d 478, 487-90 (1972); *Grasse*, 412 Ill. at 199.

The dissenting appellate court justice below identified this as the "real difference" at issue here. A104. "Under Section 25(e), victims of crimes that were committed by drivers of TNCs are basically prohibited from obtaining relief for acts of sexual predators, unlike victims of crimes that were committed by drivers of common carriers." *Id.* This is because victims of sexual assault at the hands of rideshare drivers will in almost every instance not be able to recover much, if anything, from their attackers. If Section 25(e) is upheld, it

will bar innocent victims like Jane from recovering against the same ridesharing companies that put them in harm's way. At the same time, victims of a sexual assault at the hands of taxicab drivers would face no such bar, rendering similarly situated plaintiffs subject to radically different outcomes for no reason but to protect a favored class.

The appellate court majority below concluded that this outcome is reasonable because "[w]hether a passenger is injured or attacked by a rideshare driver rather than a taxicab driver does not result from happenstance but from the passenger's voluntary decision to use a rideshare service rather than a taxi service." A97. The dissent found this difference immaterial and was right to do so. A104. Respectfully, this statement should be rejected for what it is, victim blaming.

As the dissenting appellate court justice stressed, one of the purposes of the Illinois Constitution is "'to provide for the health, safety and welfare of the people' and to 'assure legal, social and economic justice.'" A106 (quoting Ill. Const. 1970 pmbl. Section 25(e) flies in the fact of both of these objectives. It is neither reasonable nor rational, but represents a "total disregard[]" for "the health, safety and welfare of the people who would utilize" rideshares' services, and it "creates an unjust result to the victims of sexually predatory drivers who use the services of rideshare companies relying on their advertisements that they will have a safe ride." A106-07. Jane's experience here bears testament to this truth.

The stated purpose of the TNPA, supported by every provision but Section 25(e), is to protect the public and passenger safety and well-being. Instead of achieving that laudable goal, Section 25(e) acts as a poison pill, allowing rideshare companies like Lyft to operate and expand in Illinois with near impunity. The more they do so, the more the public will be endangered, inevitably resulting in ever more victims like Jane being raped and left without any meaningful recovery. Given this reality, it is difficult to see how Section 25(e) can be called reasonable or be said to bear any rational relation to a legitimate state interest.

B. The manner of the TNPA's passage violates the Constitution's Three-Readings Rule

The Illinois Constitution requires that all bills "shall be read by title on three different days in each house" prior to passage. Ill. Const. 1970, art. IV, § 8(d). The object of the Three-Readings Rule is to keep legislators advised of proposed legislation by calling it to their attention on three separate occasions. *Gibelhausen v. Daley*, 407 Ill. 25, 48 (1950). It is intended to promote transparency and to "slow down" the legislative process "and make it more deliberate." Lousin, *The Illinois State Constitution: A Reference Guide* 105. Although this constitutional requirement does not necessitate the reading process start anew after each amendment, that is only true of amendments "germane" to the general subject matter of the original bill. *Gibelhausen v. Daley*, 407 Ill. at 46. An amendment is germane in this context when there is

a "common tie … in the tendency of the provision to promote the object and purpose of the act to which it belongs." *Id.* at 47.

Here, there is no question that House Amendment 1 to S.B. 2774 had nothing to do with the previous, twice-read version of S.B. 2774. The purpose of that prior version of the bill addressed the regulation of public accountants. SR145. Regulating ridesharing companies is plainly unrelated to this topic. The original bill was simply stripped of its entire content and the replaced with the TNPA, then read once, and then quickly passed at the close of the legislative session. SR145-65.

This Court has made clear that where, as here, "there was a complete substitution of a new bill under the original number, dealing with a subject which was not akin or closely allied to the original bill, and which was not read three times in each House, after it has been so altered, [it is] in clear violation" of the Three-Readings Rule. *Gibelhausen*, 407 Ill. at 48. The passage of the TNPA was, therefore, exactly the kind of abuse of the legislative process the rule was designed to end.

This Court has previously deferred to the legislature on this issue pursuant to the judicially-created "enrolled-bill doctrine," viewing it as a separation of powers issue arising out of the language in article IV, section 8(d) of the Constitution, which provides that "[t]he Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been

met." Ill. Const.1970, art. IV, § 8(d); *Geja's*, 153 Ill. 2d at 258-59. The Court has "interpreted this language to mean that, upon certification by the Speaker and the Senate President, a bill is conclusively presumed to have met all procedural requirements for passage." *Geja's*, 153 Ill. 2d at 259.

However, this Court has also observed that "the General Assembly has shown remarkably poor self-discipline in policing itself," with regard to this constitutional requirement, violating it with "regularity." *Id.* at 260. It has cautioned that this abuse of our constitutional system is not what the framers of the Constitution envisioned. *Id.* Even when applying the enrolled-bill doctrine, the Court has said that it was only deferring "hesitantly" and it did "not wish to understate the importance of complying with the Constitution when passing bills." *Id.* at 260. The Court has thus admonished the legislature on several occasions, that "[i]f the General Assembly continues its poor record of policing itself, we reserve the right to revisit this issue on another day to decide the continued propriety of ignoring this constitutional violation." *Id.* at 260; *accord Friends of the Parks v. Chicago Park District*, 203 Ill. 2d 312, 329 (2003).

Jane submits that the day for revisiting this doctrine in earnest has come. If ever there were a case calling on this Court to make good on its warnings that it would no longer ignore the legislature's abuse of the lawmaking process, this is it. Rather than heed the Court's warnings, the legislature has openly defied them to enact a law that would relegate innocent

plaintiffs like Jane to the status of second-class rape victims. The representations made by the former House Speaker and Senate President that the TNPA met the Constitution's procedural requirements for passage are demonstrably and unquestionably false; they cannot candidly be considered proof, much less conclusive proof, of adherence to constitutional mandates.

Respectfully, if this Court's warnings were anything more than a bluff, striking down the TNPA is the only possible recourse. Although Jane respects this Court's prior concerns about the separation of powers, that doctrine concerns a balance between the branches of government, not a surrender of one to the other. It is the duty of this Court to ensure that unconstitutional legislation is struck down. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). As this Court said the last time it warned the legislature about such behavior, "[w]hile separation of powers concerns militate in favor of the enrolled-bill doctrine, our responsibility to ensure obedience to the constitution remains an *equally important* concern." *Friends of the Parks*, 203 Ill. 2d 312, 329 (2003) (emphasis added). This case puts that statement to the test.

The second certified question should, therefore, also be answered in the negative and in Jane's favor.

CONCLUSION

Lyft contends that the TNPA should be applied to deny those sexually assaulted by its drivers any meaningful recovery. Jane asks this Court to find otherwise and to condemn, rather than condone, such a plain perversion of

justice. Her fate, and those of many others in her position, hangs in the balance, waiting to be tipped toward justice by this Court.

WHEREFORE, and for all the reasons stated above, Jane respectfully asks this Court to answer both of the circuit court's certified questions in the negative, remand this matter to the lower court with instructions to reinstate Jane's relevant claims, and grant any other relief the Court deems appropriate.

Dated: May 28, 2021

Respectfully submitted,

Jane Doe, *Plaintiff-Appellant*

By: *J. Timothy Eaton*
One of Her Attorneys

J. Timothy Eaton
Jonathan B. Amarilio
TAFT STETTINIUS & HOLLISTER LLP
111 E. Wacker Drive, Suite 2800
Chicago, Illinois 60601
Tel.: 312.527.4000
teaton@taftlaw.com
jamarilio@taftlaw.com

Timothy S. Tomasik
Patrick J. Giese
TOMASIK KOTIN KASSERMAN, LLC
161 N. Clark Street, Suite 3050
Chicago, Illinois 60601
Tel.: 312.605.8800
tim@tkklaw.com

Attorneys for Plaintiff-Appellant Jane Doe

70096823v5

CERTIFICATE OF COMPLIANCE

I, J. Timothy Eaton, an attorney, hereby certify that the foregoing Appellant's Brief and Supporting Appendix for Plaintiff Jane Doe conforms to the requirements of Illinois Supreme Court Rules 341(a) and (b). The length of this brief is 14,999 words, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) Table of Contents and Points and Authorities, the Rule 341(c) certificate of compliance, those matters appended to the brief under Rule 342(a), and the certificate of service.

Dated: May 28, 2021

/s/ J. Timothy Eaton

No. 126605

IN THE SUPREME COURT OF ILLINOIS

JANE DOE, Plaintiff-Appellant, v. LYFT, INC., ANGELO MCCOY, and STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS, Defendants-Appellees.	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-19-1652 There on Appeal from the Circuit Court of Cook County, No. 17 L 11355 Honorable Patricia O'Brien-Sheahan, Judge, presiding.

NOTICE OF FILING

TO: *All Parties on the Attached Service List*

PLEASE TAKE NOTICE THAT on **May 28th, 2021**, we caused to be filed (electronically submitted), with the Clerk of the Supreme Court of Illinois, the **Appellant's Brief and Supporting Appendix for Plaintiff-Appellant Jane Doe**, which is hereby served upon you.

Dated: May 28, 2021

Respectfully submitted,

JANE DOE, *Plaintiff-Appellant,*

By: */s/ J. Timothy Eaton*
One of Their Attorneys

J. Timothy Eaton
Jonathan B. Amarilio
TAFT STETTINIUS & HOLLISTER LLP
111 East Wacker Drive, Suite 2800
Chicago, Illinois 60601
teaton@taftlaw.com
jamarilio@taftlaw.com

CERTIFICATE OF SERVICE

The undersigned, pursuant to the provisions of 1-109 of the Illinois Code of Civil Procedure, and Ill. S. Ct. R. 12, hereby certifies and affirms that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that the verily believes the same to be and that he caused the foregoing **Notice of Filing** and the **Appellant's Brief and Supporting Appendix for Plaintiff-Appellant Jane Doe**, to be sent to the parties listed below on this 28th day of May, 2021, by *electronic mail* from the offices of Taft Stettinius & Hollister LLP before the hour of 5:00 p.m.:

Timothy S. Tomasik
Patrick J. Giese
Tomasik Kotin Kasserman, LLC
161 North Clark Street, Suite 3050
Chicago, IL 60601
tim@tkklaw.com
pat@tkklaw.com
cc: ashley@tkklaw.com
Attorneys for Plaintiff Doe

Anthony J. Carballo
Martin Syvertsen
FREEBORN & PETERS LLP
311 S. Wacker Drive, Suite 3000
Chicago, IL 60606
(312) 360-6000
tcarballo@freeborn.com
msyvertsen@freeborn.com
Attorneys for Defendant, Lyft, Inc.

Beth A. Stewart (*pro hac vice*)
Emily A. Rose (*pro hac vice*)
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
bstewart@wc.com
erose@wc.com
Attorney for Defendant Lyft, Inc.

Michael O'Neil – Michael.oneil@reedsmith.com
Karlin E. Sangdahl – ksangdahl@reedsmith.com
Reed Smith LLP
10 S. Wacker Drive, 40th Floor
Chicago, Illinois 60606-7507

Caleb Rush
Assistant Attorney General
KWAME RAOUL
Attorney General
State of Illinois
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
CivilAppeals@atg.state.il.us
crush@atg.state.il.us

/s/ J. Timothy Eaton

Case No. 126605

In the Supreme Court of Illinois

JANE DOE,

Plaintiff-Appellant,

v.

LYFT, INC., ANGELO MCCOY, and STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS,

Defendants-Appellees.

On Appeal from the Appellate Court of Illinois,
First Judicial District, Case No. 1-19-1328,
There on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Law Division, Case No. 17 L 11355,
Hon. Patricia O'Brien Sheahan, Judge Presiding

APPENDIX TO APPELLANT'S BRIEF

J. Timothy Eaton
Jonathan B. Amarilio
TAFT STETTINIUS & HOLLISTER LLP
111 E. Wacker Drive, Suite 2800
Chicago, Illinois 60601
Tel.: 312.527.4000
teaton@taftlaw.com
jamarilio@taftlaw.com

Timothy S. Tomasik
Patrick J. Giese
TOMASIK KOTIN KASSERMAN, LLC
161 N. Clark Street, Suite 3050
Chicago, Illinois 60601
Tel.: 312.605.8800
tim@tkklaw.com

Attorneys for Plaintiff-Appellant Jane Doe

ORAL ARGUMENT REQUESTED

E-FILED
5/28/2021 2:25 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

TABLE OF CONTENTS TO APPENDIX

70356592v1

TABLE OF CONTENTS TO SUPPORTING RECORD

Volume II

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JANE DOE,	)	
Plaintiff,	)	
v.	)	**No. 2017 L 11355**
	)	
LYFT, INC.; LYFT ILLINOIS, INC.;	)	
ANGELO MCCOY; and	)	
STERLING INFOSYSTEMS, INC. d/b/a	)	
STERLING TALENT SOLUTIONS,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Before the Court is defendant Lyft's 2-615 partial motion to dismiss. The matter is fully briefed, including supplemental briefing at the request of the parties. The Court has reviewed all submitted materials and has considered the well-articulated arguments made by counsel on both sides. As reflected in the extensive briefing, this case raises several significant issues of first impression. Following the hearing, the Court invited the parties to propose questions for Supreme Court Rule 308 certification, and then certified two questions.

Plaintiff then brought an emergency motion to clarify the Court's order, seeking clarity on whether the Court, in certifying questions of law under Rule 308, had intended to grant or deny the 2-615 motion. The Court offered an additional opportunity to provide supplemental authority on whether questions could be certified under Rule 308 without issuing a ruling on an underlying motion. As a result of the additional briefing, the Court vacated the order of April 17, 2019, took plaintiff's motion to clarify under advisement, and continued this matter for ruling to today.

Although neither side was able to identify Illinois authority that specifically addresses the necessary content for "an interlocutory order not otherwise appealable" under Rule 308 to certify a question to the Appellate Court, the guidance provided by the Court's footnote in *Moore v. Chicago Park District*, 2012 IL 112788, persuades this Court, in an abundance of caution and for the sake of judicial economy, to issue the following ruling on defendant's 2-615 motion and re-certify questions of law under Rule 308.

While defendant's partial motion to dismiss is brought under section 2-615, the parties have substantially litigated issues that include affirmative matter, including 625 ILCS 57/25. A court considering a 2-615 motion may consider "matters of which the court may take judicial notice," *Pooh-Bah Enters., Inc. v. Cty. of Cook*, 232 Ill. 2d 463, 473 (2009). Public government records, including statutes, are within the realm of those matters. *In re W.S.*, 81 Ill. 2d 252, 257

(1980). *See also Wallace v. Smyth*, 203 Ill. 2d 441, 447 (2002) (ruling on the merits of a 2-615 motion that should have been brought under 2-619 where the improper designation did not prejudice the plaintiff). Thus, the Court provides its findings and ruling as follows.

I.

This case arises from a heinous criminal act. The Court's analysis proceeds with the gravity of the underlying facts at the forefront of the Court's attention.

On the night of July 7, 2017, Jane Doe was abducted, driven to a dark alley, zip-tied, and sexually assaulted at knife-point in the back seat of a vehicle operated by defendant Angelo McCoy, who was a driver for Lyft at the time. Jane Doe used Lyft's app to hail a ride. Through the Lyft app, Lyft provided McCoy to be her driver.

In its motion, Lyft seeks dismissal of counts III (assault and battery) and IV (false imprisonment), asserting that plaintiff has failed to state a legally sufficient claim upon which relief can be granted. This Court previously granted Lyft's motion to dismiss the counts against Lyft Illinois, Inc. with prejudice, as "Lyft Illinois" was an assumed corporate name used by Lyft, Inc. pursuant to 805 ILCS 5/4.15.

II.

In Illinois, a plaintiff bringing a claim for vicarious liability under the doctrine of *respondeat superior* must plead: 1) that a principal/agent relationship existed; 2) that the principal controlled or had the right to control the conduct of the alleged employee or agent; and 3) that the alleged conduct of the agent or employee fell within the scope of the agency or employment. *Wilson v. Edward Hosp.*, 2012 IL 112898. Lyft argues that counts III and IV of plaintiff's complaint are legally deficient because an employer cannot be held liable for acts that are beyond the scope of employment or agency as a matter of law.

Our Supreme Court held in *Deloney v. Board of Education*, 281 Ill. App. 3d 775 (1996), that an employee who had committed sexual assault did so "solely for his personal benefit," and that "as a matter of law, his alleged actions were outside the scope of employment." *Id.* at 786-788. Applying *Deloney*, the court in *Doe v. Lawrence Hall Youth Services*, 2012 IL App (1st) 103758, affirmed the 2-615 dismissal of a claim for *respondeat superior* liability because "sexual assault *by its very nature* precludes a conclusion that it occurred within the employee's scope of employment under the doctrine of *respondeat superior*." *Id.* at ¶28 (emphasis added). Illinois courts have consistently held that the criminal acts of false imprisonment and sexual assault are beyond the scope of employment; as a general matter, the doctrine of *respondeat superior* does not expose principals to liability for criminal acts committed by their agents where those acts are "solely for the benefit of the employee." *Deloney*, 281 Ill. App. 3d at 783 (*citing Gambling v. Cornish*, 426 F. Supp. 1153 (N.D. Ill. 1977)).

III.

An exception to the general scope of employment rule exists where an agent's employer owes an individual a heightened duty of care. Under such circumstances, an employer may be liable for the torts of its agent, even if committed outside the scope of actual or apparent employment. *McNerney v. Allamuradov*, 2017 IL App (1st) 153515, ¶76. The issue of whether plaintiff's complaint is legally sufficient therefore turns on whether she has sufficiently pleaded that Lyft owed her a heightened duty of care.

Plaintiff states in her complaint that Lyft is a common carrier. Compl. ¶101 ("Lyft, Inc., as a common carrier, owed the highest duty of care to provide a safe environment for its patrons that were lawfully in its vehicles."). "Courts have historically held that a hotel or common carrier ... must exercise the 'highest degree of care.'" *Gress v. Lakhani Hospitality*, 2018 IL App (1st) 170380, ¶16. Plaintiff cites to *Illinois Highway Transp. Co. v. Hantel*, 323 Ill. App. 364 (1944) to support her claim that pleading alone, at the 2-615 stage, is sufficient to establish such status. But the facts in *Illinois Highway*, decided in 1944, are distinguishable from those in the instant case. *Illinois Highway* dealt with a question of common carrier status to determine whether an alleged carrier was subject to regulation. Here, the question of whether Lyft is a common carrier is a question about the duty of care that it owes its passengers.

A question about the existence of a tort duty is a question of law. *Doe v. Sanchez*, 2016 IL App (2d) 150554, ¶¶20-21. Moreover, entities are often specifically designated as common carriers – or not – by various statutes. *See e.g.* 625 ILCS 57/25(e). Plaintiff's assertion, therefore, is a legal conclusion that is not automatically deemed admitted for the purposes of Lyft's motion.

In its reply, Lyft cites to Illinois' Transportation Network Providers Act ("TNPA"), 625 ILCS 57/1, *et seq.*, which regulates "[t]ransportation network[ing] compan[ies]" ("TNCs"). The TNPA defines a TNC as "an entity ... that uses a digital network or software application service to connect passengers to transportation network company services provided by transportation network company drivers." 625 ILCS 57/5. The TNPA was enacted in 2015. It expressly states that "TNCs or TNC drivers are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle services." 625 ILCS 57/25(e).

There is no dispute that Lyft is a transportation networking company. Plaintiff pleads in her complaint that "LYFT is a *transportation networking company* that provides a mobile application as an online enabled platform connecting passengers with drivers using personal vehicles." Compl. at ¶6 (emphasis added). Section 25(e) of the TNPA, plainly read, is a carve-out for TNCs. It establishes, as a matter of law, that Lyft is not a common carrier.

IV.

Following Lyft's argument in its reply that the TNPA specifically exempts it from common carrier status, plaintiff filed an emergency motion to allow supplemental briefing, which the Court granted. In this briefing, the parties dispute yet another layer of analysis: whether the TNPA, and specifically Section 25(e) thereof, is constitutional.

"Lyft's argument that [it] is specially protected from common carrier status by the TNPA," plaintiff argues at page 2 in her sur-reply, "nonetheless fails because the provision of that statute upon which it relies - Section 25(e) - violates the ban on special legislation found in article IV, section 13 of the Illinois Constitution, and should therefore be struck down by this Court and disregarded for purposes of Lyft's potential liability."

As a procedural matter, Illinois Supreme Court Rule 19 requires that "in any cause or proceeding in which the constitutionality ... of a statute ... is raised, and to which action or proceeding the State or the political subdivision, agency, or officer is not already a party, the litigant raising the constitutional ... issue shall serve an appropriate notice thereof on the Attorney General, State's Attorney, municipal counsel or agency attorney, as the case may be."

Illinois Supreme Court Rule 18 requires "that the notice required by Rule 19 has been served, and that those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute, ordinance, regulation, or other law challenged," and that in lieu of this, "a court shall not find unconstitutional a statute, ordinance, regulation, or other law." Rule 19 notice was not served upon the Attorney General's office prior to the February 8, 2019 hearing on this motion.

Where a plaintiff has failed to comply with the Supreme Court Rules, courts are barred from finding the TNPA – or any statute – unconstitutional. The Rules, however, only prevent a Court from finding that a statute is *unconstitutional*. That restriction is not at issue in this ruling; for the reasons that follow, this Court finds that the TNPA, including Section 25, is constitutional.

Regardless of the procedural issues, a LexisNexis Shepard's report created this morning, June 4, 2019, lists neither a single citing decision nor other citing source for Section 25 of the TNPA, which leads this Court to believe that this issue is a seminal matter of first impression.[1] Accordingly, a detailed analysis of the relevant issues is appropriate.

Plaintiff's contention is that Section 25(e) "on its face ... sets ridesharing companies like Uber and Lyft apart from other transportation companies," and that it therefore violates the special legislation clause of the Illinois Constitution. That clause provides that "[t]he General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const. 1970, art. IV, § 13. This clause "expressly prohibits the General Assembly from

[1] https://advance.lexis.com/api/permalink/218bff5d-026e-4bed-a2e6-039fe23a5c83/?context=1000516

conferring a special benefit or exclusive privilege on a person or group of persons to the exclusion of others similarly situated." *Best v. Taylor Mech. Works*, 179 Ill. 2d 367, 391 (1997).

In support of her assertion that the TNPA violates the special legislation clause, plaintiff points to various aspects of the statute's legislative history. She argues, for example, that "the rewritten bill ... favored rideshare companies at the expense of all other persons and interests." Plaintiff's Sur-Reply, p. 7.

The Illinois Supreme Court held in *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12 (2003), that "where ... the statute under consideration does not affect a fundamental right or involve a suspect classification, it will be judged under the rational basis test." *Id.* at 22. Neither plaintiff nor Lyft disputes the applicability of the rational basis test in this instance. "Under this test, the statute is constitutional if the legislative classification is rationally related to a legitimate state interest." *Id.*

The rational basis test is a very low threshold; statutes "carry a strong presumption of constitutionality, and the party challenging a statute has the burden of rebutting the presumption." *Crusius v. Ill. Gaming Bd.*, 216 Ill. 2d 315, 324 (2005). Because courts should defer to the legislature's policy decisions, courts have a "duty to uphold the constitutionality of a statute if it is reasonably possible to do so." *Id.* Recognizing that courts are not lawmakers, the special legislation clause of the Illinois Constitution permits striking down legislation only in those rare circumstances where a statute "mak[es] classifications that arbitrarily discriminate in favor of a select group." *Id.* at 325. Accordingly, the question before the Court is whether the TNPA discriminates arbitrarily. For the reasons that follow, this Court finds that it does not.

A statute is not arbitrary when it "is based upon some real and substantial difference in kind, situation or circumstance in the persons or objects on which the classification rests, and which bears a rational relation to the evil to be remedied and the purpose to be attained by the statute." *Grasse v. Dealer's Trans. Co.*, 412 Ill. 179, 194 (1952). If the "Court can reasonably conceive of any set of facts that justify a distinction between the class the statute benefits and the class outside its scope, [it] will uphold the statute." *GMC v. State Motor Vehicle Review Bd.*, 224 Ill. 2d 1, 31 (2007).

Counsel for Lyft noted at oral argument that 21 other states thus far have held that TNCs are not common carriers. Transcript p. 36 at 3-14. The TNPA's legislative history, contrary to plaintiff's claims, provides a wide array of justifications like those contemplated in *GMC*. While plaintiff correctly notes that the procedural hook the legislature used to pass the TNPA was abnormal, she does not allege that the legislature itself violated any legislative or constitutional procedural rules. Such a process is uncommon – but not disallowed – and the record explains *why* the legislature took this route. Indeed, the record before the Court contains "about five pounds of legislative history." Transcript p. 37 at 10-12.

During floor discussions, Rep. Ives questioned "why ... is there a rush to get this done," giving voice to what appear to be concerns similar to those raised by plaintiff in her briefing. Rep. Zalewski answered: "There [are] two reasons why I want to do it now. The first is because we said we would. When we agreed not to call the Motion, we said we would work this out

before the expiration of this General Assembly. ... The second reason[] behind it is this is ... a very hard issue to deal with in terms of legislation and statute making. And I don't feel as though this issue can linger on, because it's just hard to get agreement on these issues. ... My feeling is that if we have agreement we should pass a Bill and not risk having this regulatory vacuum in the state of Illinois."

Following the period of discussion, SB 2774 passed the General Assembly by overwhelming majority. In total, 105 "yes" votes, 7 "no" votes, and 2 "present" votes were recorded. The Senate's vote on the bill was 52 "aye," 2 "nay," and 1 "present." By any metric, the legislation now before the Court had mass approval by both chambers of the legislature. Such a wide margin runs contrary to plaintiff's concerns that the legislature itself faced great internal conflict about the bill picking "winners and losers." But it was not just the legislature that supported the bill. Critically, the Illinois Transportation Trade Association is indicated as a proponent on the witness slip records for the TNPA. *See* Lyft's Sur-sur-reply Ex. 12. The ITTA is more commonly known as the leading taxicab lobbying organization in Illinois. Taxicabs, of course, are the most obvious economic opponents of TNCs. Their support for the TNPA is a strong sign that the Act avoids picking economic winners and losers.

The taxicab lobby's support for the bill should be accorded heightened significance, given the lobby's opposition to the differential regulation of TNCs in other legal arenas. In 2016, the 7th Circuit issued its opinion in *Illinois Transportation Trade Association v. City of Chicago*, 839 F.3d 594 (7th Cir. 2016). Writing for the majority, now-retired Judge Richard Posner opined as follows:

> "The plaintiffs argue that the City has discriminated against them by failing to subject Uber and the other [TNCs] to the same rules about licensing and fares (remember that taxi fares are set by the City) that the taxi ordinance subjects the plaintiffs to. That is an anticompetitive argument. Its premise is that every new entrant into a market should be forced to comply with every regulation applicable to incumbents in the market with whom the new entrant will be competing." *Id.* at 597.

In *Illinois Transportation*, the ITTA sued the City of Chicago over its ordinance regulating companies like Lyft. That ordinance was new and separate from the existing and long-standing ordinance governing taxicabs. The ITTA argued, in essence, that such disparate treatment would be disadvantageous to them. Put in terms similar to those alleged by plaintiff here, they believed that the ordinance would disrupt their market by impermissibly and unconstitutionally picking winners and losers. Unlike Judge Posner, however, the Court is not currently tasked with determining whether TNCs and taxis are so distinguishable in kind as to warrant different governance. The Illinois legislature has made that decision already, answering the question of whether such a difference exists with a resounding "yes." One significant difference between *Illinois Transportation* and the instant case, of course, is that the taxicab companies are not contesting this legislation; rather, they supported it.

V.

An important aspect of plaintiff's argument is that she believes Subsection 25(e) ought to be treated by this Court as severable from the rest of the statute, or at least from the rest of Section 25. She argues that the purpose of the statute was to promote "safety." Safety alone, however, was not the legislature's sole intent in enacting the TNPA. The record establishes that the legislature saw a strong need to promote and enable the growth of TNCs in the state of Illinois. 25(e) is consistent with this goal. HB 4075, the original iteration of an attempt to regulate TNCs, was in fact vetoed by Governor Quinn on the grounds that it may have been too restrictive – potentially quashing healthy competition.

The General Assembly, in evaluating SB 2774 during hearings, was incredibly concerned with whether the various TNCs themselves would be in favor of the legislation. It is also not surprising that a term excluding TNCs from common carrier status would be included under a section regulating safety. After all, as plaintiff argues, a common carrier owes its passengers a heightened duty of care. As Judge Posner noted in *Illinois Transportation*, it is equally permissible for a government to choose "the side of deregulation, and thus of competition" when it decides how to regulate various entities and activities. *Ill. Transp.*, 839 F.3d at 599. Here, the legislature made such a choice when it voted to pass the TNPA, including Subsection 25(e). The obligation of the Court is to give effect to legislative intent wherever possible. Holding that Lyft ought to be treated like a common carrier despite this legislation would undermine that intent.

VI.

The record before the Court establishes multiple lengthy and detailed justifications for the TNPA, and its enactment was supported by a wide variety of entities and individuals. As difficult as it may be under the circumstances of this case, it would be an abrogation of this Court's duty given such a record to find that the statute is unconstitutional. But the arguments presented by plaintiff in her briefing and by her counsel at oral argument are not unpersuasive:

> "They advertise they take the most vulnerable passengers. They have commercials on TV that say if you drink too much, get in a Lyft car. We will take care of you. Well, this driver ... brutally raped this woman who was asleep in the back because she had been drinking. Exactly the type of person they advertise for, and then their driver commits this heinous crime." Transcript p. 46 at 11-19.

Lyft does not dispute that it advertises its services to potential customers who are intoxicated. Lyft also does not dispute that transportation network companies are similar to common carriers; they take any member of the public who would hail them, and in the absence of the TNPA, it is likely that they would owe a heightened duty to their passengers. However, where the legislature has spoken, the Court is bound to follow the rule it creates. The TNPA explicitly designates TNCs as being exempt from common carrier status, and Lyft is therefore so exempted.

Certainly, the TNPA creates a recovery gap for both plaintiff and for others who are similarly situated. An individual Lyft driver is much less likely to be able to adequately

compensate a victim of sexual assault for the harm that the driver imposes. Similarly, if the statute fully shields transportation network companies from liability from the worst harms that its drivers impose on its riders, the company is less incentivized to protect against those harms. The legislature may find this case and others like it to be an appropriate catalyst for revisiting the Transportation Network Providers Act.

For the reasons given, the Court finds that subsection 25(e) of the Transportation Network Providers Act, 625 ILCS 57/1 *et seq.*, is rationally related to a legitimate state interest. The statute specifically designates that Transportation Network Companies, which the parties agree Lyft is accurately categorized as, are not common carriers. Thus, Section 25(e), as applied to the pleadings now before the Court, bars recovery against Lyft under a vicarious liability theory that relies on Lyft's alleged status as a common carrier. That said, Plaintiff's arguments both in her briefing and at oral argument, including those based on *Doe v. Sanchez*, 2016 IL App (2d) 150554, are well-taken, and the Court does not hold at this time that different theories of liability brought in an amended complaint would be similarly barred.

Accordingly, defendant Lyft's partial motion to dismiss is GRANTED and counts III and IV are dismissed without prejudice. Counts I and II, not at issue in this motion, remain standing. Whether plaintiff can plead around the TNPA by pleading a heightened duty of care under common law is an issue of first impression. Because counts III and IV are dismissed without prejudice, this is an interlocutory order not otherwise appealable. The Court finds that the order involves questions of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from today's order may materially advance the termination of the litigation. The Court hereby certifies the following two (2) questions for immediate appeal pursuant to Illinois Supreme Court Rule 308:

1. Does Section 25(e) of the Transportation Network Providers Act, 625 ILCS 57/25(e), which states that transportation network companies (TNCs) "are not common carriers," preclude TNCs, such as Lyft, from otherwise being subject to the highest duty of care under common law, like that of a common carrier's elevated duty to its passengers?

2. If TNCs are precluded from being subject to a common carrier's elevated duty of care to passengers, is the Transportation Network Providers Act, including Section 25(e), a constitutional exercise of the legislature's power?

Plaintiff is granted leave to file her first amended complaint as to the count against Sterling only, over Sterling's objection, for the reasons stated in open court and incorporated into the record. Plaintiff is given 7 days, until June 11, 2019, to file her first amended complaint. As of June 11, 2019, this case is placed on the Appellate Stay Calendar until further notice. It is agreed by the parties that plaintiff's amended complaint will not change allegations against Lyft while this matter is on appeal.

Judge Patricia O'Brien Sheahan

JUN -4 2019

Circuit Court - 2136

IT IS SO ORDERED:

Date: June 4, 2019

Judge Patricia O'Brien Sheahan

E-FILED
Transaction ID: 1-19-1328
File Date: 7/1/2019 2:17 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

Case No. _____

In the
Appellate Court of Illinois
First Judicial District

JANE DOE,

Plaintiff-Movant,

v.

LYFT, INC., ANGELO MCCOY; and STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS,

Defendant-Respondent.

On Appeal from the Circuit Court of Cook County, Illinois
County Department, Law Division, Case No. 17 L 11355
Hon. Patricia O'Brien Sheahan, Judge Presiding

JANE DOE'S APPLICATION FOR LEAVE TO APPEAL PURSUANT TO ILLINOIS SUPREME COURT RULE 308

J. Timothy Eaton
Jonathan B. Amarilio
Allison E. Czerniak
Ioana M. Guset
TAFT STETTINIUS & HOLLISTER LLP
111 E. Wacker Drive, Suite 2800
Chicago, Illinois 60601
Tel.: 312.527.4000
teaton@taftlaw.com
jamarilio@taftlaw.com
acerniak@taftlaw.com
iguset@taftlaw.com

Timothy S. Tomasik
Patrick J. Giese
Patrick M. Grim
TOMASIK KOTIN KASSERMAN, LLC
161 N. Clark Street, Suite 3050
Chicago, Illinois 60601
Tel.: 312.605.8800
tim@tkklaw.com

Attorneys for Plaintiff-Movant Jane Doe

INTRODUCTION AND CERTIFIED QUESTIONS

As the circuit court characterized it, "[t]his case arises from a heinous criminal act." SR273.[1] "On the night of July 7, 2017, Jane Doe was abducted, driven to a dark alley, zip tied, and sexually assaulted at knife point in the back seat of a vehicle operated by defendant Angelo McCoy, who was a driver for Lyft at the time. Jane Doe used Lyft's app to hail a ride. Through the Lyft app, Lyft provided McCoy to be her driver." SR274. The attack was nothing short of brutal, involving multiple acts of oral, vaginal and anal penetration.

In the wake of this attack, Jane filed suit against Lyft, Inc., its driver background screening service Sterling Infosystems, Inc., and McCoy. As to Lyft, Jane claimed that it is not only directly liable for negligently hiring, supervising and retaining McCoy given his prior criminal record, but also vicariously liable for the assault, battery and false imprisonment committed by its driver. SR17-21. Jane also brought a claim for fraud against Lyft arising from its marketing campaigns, which tell the public that Lyft offers a safe alternative to taxicabs and other common carriers, that "[s]afety is our top priority," that the public should "let us be your designated driver," that Lyft "work[s] hard to design policies and features that protect our community," and that passengers "use Lyft because they feel safe with our drivers," among other things, when Lyft actually does much less to protect its passengers' safety than it leads them to believe. SR4; SR11-12; SR18.

Lyft moved to dismiss Jane's vicarious liability claims, arguing that it cannot be held liable for McCoy's actions under the doctrine of *respondeat superior* because those actions were taken outside the scope of his employment. SR30. Jane responded that Lyft

---

[1] Plaintiff's Ill. S. Ct. R. 308(c) supporting record is referenced herein as "SR__."

can nonetheless be held vicariously liable because it is a common carrier, and even if Lyft is not a common carrier, Illinois common law provides that transportation companies that are similar to common carriers should be held to the same high duty of care as common carriers, provided those companies exercise control over their passengers' safety while transporting them. SR38.

Lyft replied that it is not a common carrier and it cannot be held to a heightened duty of care because it is specially exempted from common carrier status by Section 25(e) of the Transportation Network Providers Act, 625 ILCS 57/1 *et seq.* ("TNPA"), which states that rideshare companies "are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle service." 625 ILCS 57/25(e). Although the TNPA was meant to protect rideshare passengers, Lyft argued that Section 25(e) of the statute protects rideshare companies (also known as Transportation Network Companies ("TNCs")) from vicarious liability when their drivers attack their passengers. SR53.

Jane responded that the TNPA's Section 25(e) is unconstitutional because it violates the ban on special legislation found in article IV, section 13 of the Illinois Constitution, and because the manner of its passage violated the "three-readings rule" found in article IV, section 8(d) of the Illinois Constitution. Ill. Const. art. IV, §§ 8(d), 13. SR62. Jane further argued that regardless of the constitutionality of Section 25(e), rideshare companies cannot evade Illinois common law holding non-common carriers to a heightened duty of care when they exercise control over their passengers' safety. *Id.* This is consistent with the approach reflected in the Restatement of Torts, which explains that the traditional "special relationships," including that between common carriers and their

passengers, are not meant to be exclusive and are evolving toward "a recognition of the duty to aid or protect in any relation of dependence." Restatement (Second) of Torts § 314(A), cmt. b (1965).

The circuit court granted Lyft's partial motion to dismiss without prejudice, finding that because acts of sexual assault are deemed to be outside the scope of employment, Jane's vicarious liability claims against Lyft are precluded under the doctrine of *respondeat superior* unless she can establish that Lyft owed her a heightened duty of care, such as that owed by common carriers to their passengers. SR273. And the circuit court found that Section 25(e) "is a carve out for TNCs," establishing as a matter of law that Lyft is not a common carrier. SR275. The court left open the question of whether a heightened duty should be imposed on Lyft under the common law, regardless of Section 25(e), because it exercises control over its passengers' safety similar to the control exercised by common carriers over their passengers.

The circuit court also found that Jane's common law and constitutional arguments raised important issues of first impression, the immediate appeal of which would materially advance the termination of the case. SR280. On June 4, 2019, the circuit court therefore certified the following questions to this Court under Illinois Supreme Court Rule 308:

1. Does Section 25(e) of the Transportation Network Providers Act, 625 ILCS 57/25(e), which states that transportation network companies (TNCs) "are not common carriers," preclude TNCs, such as Lyft, from otherwise being subject to the highest duty of care under common law, like that of a common carrier's elevated dutyto its passengers?

2. If TNCs are precluded from being subject to a common carrier's elevated duty of care to passengers, is the Transportation Network Providers Act, including Section 25(e), a constitutional exercise of the legislature's power?

Id.

These certified questions present issues of law and first impression for which substantial bases for differences of opinion exist. Further, an immediate answer to these legal questions from this Court will not only materially advance the termination of this litigation, but also have a substantial and immediate impact on the ridesharing public's safety. Jane therefore respectfully requests that the Court grant this application and answer the certified questions with the full benefit of briefing.

STATEMENT OF FACTS

I. Factual background

On July 7, 2017, Jane was out with her friends on Hubbard Street in Chicago's River North neighborhood celebrating a new job offer she recently received. As the night drew to a close, Jane did what Lyft told her and many millions of others to do, call a Lyft for safe transportation home. SR15-16. Jane used Lyft's mobile phone application ("app") to hail a Lyft vehicle, which soon arrived with McCoy as its driver. *Id.* Jane believed she was safely on her way home and fell asleep in the backseat of the vehicle. Jane did not know that the driver Lyft selected for her had a criminal history spanning three decades. SR13.

Rather than take her home, McCoy drove Jane to a dark and secluded alley, woke her, zip-tied her hands, and brutally sexually assaulted her at knife point. SR1. The rape involved multiple acts of oral, vaginal and anal penetration. McCoy then left Jane in the backseat of the vehicle and began to drive away, his intended destination unknown to this day. Despite the attack, Jane had the presence of mind to escape from the Lyft vehicle when McCoy momentarily stopped at a traffic light. She ran to a nearby car, pleaded for help, and was immediately driven away to safety and medical care. SR2. This is not an unusual occurrence.

Lyft is a popular and rapidly expanding ridesharing transportation company, providing on-demand ride-hailing transportation to tens of millions of members of the general public in hundreds of cities in the United States each year, and earning billions of dollars in revenue. SR2-4. As one of the two major ridesharing transportation companies in the United States, Lyft has created a market of considerable transportation convenience to the general public, but it has done so at a dangerous price to its passengers. While Lyft advertises its transportation service as a safe alternative to other means of transportation, particularly taxicabs, and makes targeted efforts to attract young women as passengers, its expansion has been fueled by lax safety practices, resulting in hundreds of reported sexual assaults. SR8-12.

For instance, Lyft uses third-party background check companies like Sterling with widely-publicized histories of deficient performance. SR7-9. Rather than using qualified security professionals to investigate the criminal histories of driver applicants, it has been reported that Sterling outsources the work to low-paid and unqualified nonprofessionals in the Philippines and India, who have little understanding of the often incomplete legal records they are made to review. Rosalind Adams, *A Lyft Driver With a Criminal Record Was Charged With Rape. So Why Was He Even Behind the Wheel?*, Buzzfeed News (May 30, 2019, 8:01 PM), https://www.buzzfeednews.com/article/rosalindadams/lyft-sterling-background-checks.[2]

---

[2] Although this specific news article was not part of the record below, Illinois courts may—and Jane asks this Court to—take judicial notice of matters of public record where doing so will aid in the efficient disposition of a case. *Village of Riverwoods v. BG Ltd. P'ship*, 276 Ill. App. 3d 720, 724 (1st Dist. 1995). Jane suggests that such notice is especially appropriate here, given the procedural posture of the case.

Lyft and Uber also lobby state legislatures and local governments to exempt themselves from regulation and, in some cases, insert poison pill provisions into regulatory efforts meant to temper the rideshare industry's worst failings. SR7. Section 25(e) of the TNPA, at issue here, illustrates such efforts.

The TNPA began in 2014 as House Amendment No. 1 to Senate Bill 2774, a wholly unrelated bill addressing the Public Accounting Act. SR145; SR149; SR161; SR165. The Illinois Constitution requires all bills to be read out three times before they may be voted upon. Ill. Const. art. IV, § 8(d). But following the first and second reading of S.B. 2774, its contents were entirely stripped and replaced with House Amendment No. 1, creating the TNPA, on December 2, 2014, one day before the end of the legislative session and the same day of S.B. 2774's third reading. SR149; SR161; SR165. House Amendment No. 1 was a complete rewrite of the legislation on an unrelated subject, and yet it assumed the same procedural posture as the prior bill. The new bill not only watered down stricter ridesharing regulations previously vetoed by then-Governor Quinn, it also contained for the first time Section 25(e), which, as discussed below, Lyft argues immunizes rideshare companies from common carrier status and the legal liability that attends that label. The newly rewritten bill was then quickly debated and voted on by both houses the following day, December 3, 2014, the very last day of 98th General Assembly. SR165; SR189-211. The bill was signed into law by outgoing Governor Quinn on his final day in office. SR165.

Although the House floor debate on S.B. 2774 was abbreviated because of the manner in which it was rushed through the legislature at the last moment, even that truncated discussion shows that the bill's House sponsor introduced it by stating that its

purpose was "to protect our constituent's [*sic*] safety." SR190. All but one provision of the statute supports that statement—Section 25(e).

Specifically, the bill (now statute): provided insurance requirements (625 ILCS 57/10); provided driver qualification requirements (625 ILCS 57/15; 625 ILCS 57/30(e)); prohibited discriminatory practices against passengers (625 ILCS 57/20); required zero-tolerance drug and alcohol policies (625 ILCS 57/25(a)); required passenger complaint procedures (625 ILCS 57/25(b)-(c)); required rideshare vehicles meet state safety and emissions standards (625 ILCS 57/25(d)); regulated how rideshare companies could charge their passengers fairly and provide passengers with fare and trip records (625 ILCS 57/30(a)-(b), (d)); required rideshare companies to provide passengers with drivers' identities and license plate information (625 ILCS 57/30(c)); and even allowed taxicabs (which are subject to the highest duty of care) to use rideshare company apps to pick up passengers (625 ILCS 57/30(f)). Standing in sharp relief from all these provisions was Section 25(e), which Lyft argues shelters ridesharing companies from common carrier status and from any duty of care to protect their passengers from attacks by their drivers. 625 ILCS 57/25(e).

Although the bill's sponsor did not discuss Section 25(e) during the floor debate, he acknowledged that the bill was the result of "negotiations with Uber" and its language "encapsulates that agreement" reached with Uber, which included an agreement to pass the bill quickly before the close of the legislative session. SR189; SR192; SR197-98.

Demonstrating the hurried manner in which normal deliberative procedures were eschewed in favor of quick action on the bill, the same sponsor announced in the middle of the floor debate that he had just received a text message confirming Lyft's support for

the bill. SR198. When the sponsor was asked shortly thereafter if sex offenders could drive ridesharing vehicles under the rewritten bill, he answered that "my sense is that it's safe to assume, not only is there a legal prohibition from [sex offenders] working there, but Uber and Lyft are hopefully going to have challenges placing that person into employment." SR202. In other words, the sponsor assumed that Lyft could not and would not hire drivers who presented a danger to their passengers. He was wrong. As Jane has alleged, Lyft often hires dangerous criminals who go on to attack their passengers. SR8-12. Section 25(e) was designed by Uber and Lyft to allow them to continue to do so with little or no consequence to their bottom line.

Rising in opposition to the hasty manner in which the bill was presented, one lawmaker said that ridesharing companies "like Uber and Lyft" presented "serious issues" that needed to be addressed by meaningful regulation in the normal course. SR195. "For an example, the security of passengers, background checks for drivers. You know, you want to make sure that when you're picked up and taken to your home that the driver's not 'Joe the sexual assaulter.'" *Id.* The representative said that while he supported the competition ridesharing companies presented to taxicab companies, he was "more for protecting consumers" than promoting the business interests of Lyft and Uber, and this rewritten version of the bill failed to accomplish that goal. SR195-97.

Another lawmaker added his concern that the bill favored Lyft and Uber at the expense of their traditional transportation competitors like taxicab companies, stating: "I still have a number of concerns about this. I think there's a major gap. I think we are somewhat picking winners and losers in an industry that provides the same service, so I think we need to continue work on this," rather than pass the bill. SR206. The legislation

nonetheless passed, and in a bill meant to protect rideshare passengers, Lyft and Uber inserted Section 25(e), which states that they "are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle service" (625 ILCS 57/25(e)), undermining the very passenger protections the bill was meant to establish.

II. Procedural history

Lyft brought a motion pursuant to 735 ILCS 5/2-615 to dismiss counts III and IV of Jane's complaint, which sought to hold Lyft vicariously liable for the assault and battery, as well as the false imprisonment committed by its driver. SR30.[3] Lyft argued that it cannot be held vicariously liable for McCoy's actions under the doctrine of *respondeat superior* because they were taken outside the scope of his employment. Jane responded that Lyft can be held vicariously liable because even if Lyft is not a common carrier by statute, Illinois common law allows non-common carrier transportation companies to be held to the same high duty of care as common carriers, provided those companies exercise control over their passengers' safety while transporting them. SR38.

Lyft replied that Section 25(e) of the TNPA specially immunizes it from common carrier status and any heightened duty of care triggered by that status. SR53. Jane responded that the TNPA's Section 25(e) is unconstitutional because it violates the ban on

---

[3] Although, at the height of the 2018 #MeToo movement, Lyft announced to the public through a nationwide marketing campaign that it would no longer force victims of sexual assault at the hands of its drivers into mandatory arbitration proceedings (*see*Sara Ashley O'Brien, CNN, *Lyft joins Uber to end forced arbitration for sexual assault victims*, May 15, 2019, 3:03 PM, https://money.cnn.com/2018/05/15/technology/lyft-forced-arbitration/index. html), Lyft also brought a separate motion to dismiss attempting toforce Jane out of court and into arbitration. The circuit court determined that Jane was entitled to discovery before she could be denied access to the court. SR318.

special legislation found in article IV, section 13 of the Illinois Constitution, and because the manner of its passage violated the "three-readings rule" found in article IV, section 8(d) of the Illinois Constitution. Ill. Const. art. IV, §§ 8(d), 13; SR62. Consistent with the doctrine of constitutional avoidance, Jane further argued that regardless of the constitutionality of Section 25(e), Lyft is still subject under Illinois common law to the highest duty of care because it performs the same basic function as a common carrier (*i.e.*, transporting passengers), and because its passengers similarly place their safety in Lyft's hands when using its transportation services. SR81.

The circuit court entered an order finding that this was "a seminal case of first impression" meeting the requirements for certification under Supreme Court Rule 308, and later entered a separate order certifying the two questions referenced above for immediate appeal. SR269-71. When preparing for that appeal, Jane's counsel observed that the circuit court's orders did not clearly state whether the relevant parts of Lyft's partial motion to dismiss were granted or denied, and therefore raised the issue with the court in a motion to clarify, pointing out that Rule 308 requires a ruling on a dispositive motion as a necessary precedent to the appellate court obtaining jurisdiction. Lyft took a different view, incorrectly arguing that the order certifying the question was itself sufficient to confer jurisdiction on this Court, and no ruling on its motion to dismiss was required. The circuit court vacated its certification order and took the matter under advisement, eventually agreeing with Jane that it was required to rule on Lyft's motion before it could certify questions to this Court under Rule 308. SR272-74.

On June 4, 2019, the circuit court granted Lyft's partial motion to dismiss without prejudice, finding that because acts of sexual assault are deemed to be outside the scope of

employment, Jane's vicarious liability claims against Lyft were precluded unless she could establish that Lyft owed her a heightened duty of care, such as that owed by common carriers to their passengers. SR273. And the circuit court found that Section 25(e) "is a carve out for TNCs," establishing as a matter of law that Lyft is not a common carrier. SR275.

However, before it addressed the constitutionality of Section 25(e), the circuit court found that Jane violated Illinois Supreme Court Rule 19 by failing to give the Illinois Attorney General proper notice of her constitutional challenges to the statute. R276. In doing so, the court did not address the fact that Jane provided the Attorney General with such notice, and the Attorney General acknowledged in writing that it received Jane's Rule 19 notice and declined the opportunity to intervene in the matter—all of which was of record SR266; SR268.[4] The court nevertheless analyzed the constitutional question because, it said, Supreme Court Rule 18 only prevented it doing so if it found the TNPA unconstitutional. SR276.

While the circuit court agreed with Jane that Section 25(e) discriminates in favor of ridesharing companies like Lyft, the court found that the legislative history "provides a wide array of justifications" for such discrimination, although the court clearly identified

---

[4] The circuit court specifically said that "Rule 19 notice was not served upon the Attorney General's office prior to the February 8, 2019 hearing" on Lyft's motion to dismiss. SR276. The TNPA was raised for the first time in Lyft's reply supporting its motion to dismiss. Jane was granted leave to file a sur-reply, in which she answered that Section 25(e) of the TNPA was unconstitutional, and Lyft was given leave to file a sur-sur-reply. SR53; SR62. Jane provided notice to the Attorney General soon after Lyft filed its sur-sur reply, and made clear to the court that she would agree to any extension requested by the Attorney General's Office to allow it time to review the case. SR266. The Attorney General notified the parties on February 19, 2019, that it would not intervene, raising no objection or complaint that it received insufficient notice of Jane's constitutional challenge. SR268. The court then decided to proceed with ruling on the matter.

only one such justification; namely, the legislature's policy decision "to promote and enable the growth of TNCs in the state of Illinois." SR277; SR279.[5] The court did not ask if that justification of providing rideshare companies with a competitive advantage was a sufficiently rational and legitimate ground to affirm the constitutionality of Section 25(e), but rather said that it was "not currently tasked" with engaging in that analysis because "the Illinois legislature has made that decision already." SR278. The court said that a holding which found "that Lyft ought to be treated like a common carrier despite this legislation would undermine [the legislature's] intent" to leave ridesharing companies comparatively unregulated. SR279.

The circuit court went on to address Jane's common law arguments, finding that rideshare companies like Lyft are similar to common carriers in that they will "take any member of the public who would hail" their vehicles, and said that "in the absence of the TNPA, it is likely that they would owe a heightened duty to their passengers." *Id.* Although the court held that it was bound to follow the TNPA and exempt Lyft from common carrier status, it said that Jane's common law arguments that rideshare companies should be subject to the same high duty of care as common carriers "are well-taken." SR280. The court said it thus "does not hold at this time that different theories of liability brought in an amended complaint would be similarly barred," and "[w]hether plaintiff can plead around

---

[5] Quoting Lyft's counsel, the court also said that there is "'about five pounds of legislative history'" for the TNPA, giving the impression that there was a robust floor debate on S.B. 2774. SR277. This is incorrect. Among other similar tactics, Lyft actively conflated the legislative histories of different proposed ridesharing regulation bills, with different legislative histories, including a bill that never became law, in order to convey that misimpression. *See, e.g.*, SR244 (misleadingly attributing statements made in the legislative history of H.B. 4075 with the legislative history of S.B. 2774).

the TNPA by pleading a heightened duty of care under common law" was another "issue of first impression." *Id.*[6]

The circuit court did not rule on the merits of Jane's procedural challenge to the TNPA, finding that "[w]hile plaintiff correctly notes that the procedural hook the legislature used to pass the TNPA was abnormal, she does not allege that the legislature itself violated any legislative or constitutional procedural rules." R277. This is inaccurate. Jane expressly challenged the manner in which the TNPA was enacted in violation of article IV, section 8(d) of the Illinois Constitution, and the court's certified questions account for that constitutional argument. SR80.

The circuit court ultimately found that the constitutionality of Section 25(e) of the TNPA, and the issue of whether rideshare companies like Lyft can be held to a heightened duty of care under Illinois common law, are legal issues of first impression that meet the requirements of Rule 308, and therefore certified the two questions identified above for immediate appeal. SR280. The court then stayed the case, pending the disposition of this appeal. *Id.*

ARGUMENT

Supreme Court Rule 308 provides a mechanism for parties to request certification of a question of law to the appellate court where (1) "there is a substantial ground for difference of opinion," and (2) "an immediate appeal from the [circuit court's] order may materially advance the ultimate termination of the litigation." Ill. S. Ct. R. 308(a). As these

---

[6] Jane attaches hereto as an exhibit a proposed Second Amended Complaint, illustrating the type of allegations she would make in this regard if permitted to do so. Although Jane was given leave by the circuit court to replead this claim, the court in certifying the above-stated questions made clear that she could not amend her complaint against Lyft before this appeal was resolved. Ex. 1; SR280.

facts demonstrate, several pivotal questions are presented in this case. First, and in accordance with the doctrine of constitutional avoidance, it must be determined whether Illinois common law allows rideshare companies like Lyft to be subject to the same heighted duty of care that common carriers owe to their passengers. Further, it must be determined whether Section 25(e) of the TNPA exempts rideshare companies like Lyft from vicariously liability for attacks committed by their drivers against their passengers and, if so, whether that statutory provision is constitutional. These are pure questions of law, questions of first impression, and questions that satisfy the requirements for Rule 308 certification.

I. The common law and constitutional questions at the center of this case present critical legal issues on which there are substantial grounds for differences of opinion.

The first prong of Rule 308 certification requires that an order involve a question of law as to which there is a substantial ground for difference of opinion. Ill. S. Ct. R. 308(a). Although the rule offers no guidance as to what constitutes a substantial ground for difference of opinion, the case law discussing it demonstrates that cases of first impression satisfy this standard. *Costello v. Governing Bd. of Lee Cty. Special Educ. Ass'n*, 252 Ill. App. 3d 547 (2nd Dist. 1993). As the trial court found, this case presents several issues of first impression.

A. The issue of whether rideshare companies can be held under Illinois common law to the same high duty of care to which common carriers are held is a question of first impression on which there are substantial grounds for differences of opinion.

Illinois law holds that employers and principals are generally not responsible for sexual assaults committed by their employees or agents because such criminal actions are considered to be outside the scope of employment. *Deloney v. Bd. of Educ. of Thornton*

Twp., 281 Ill. App. 3d 775, 783-85 (1st Dist. 1996); *but see Doe v. Clavijo*, 72 F.Supp.3d 910, 914 (N.D. Ill. 2014) (holding out the possibility without deciding that Illinois courts might find a sexual assault committed by a police officer is done within the scope of employment).

However, Illinois law has also made room for important exceptions to this general rule when the need for doing so arises. Taxicabs, for instance, are common carriers, and common carriers may be held liable for intentional and even criminal acts committed outside the scope of an employee or agent's employment. *McNerney v. Allamuradov*, 2017 IL App (1st) 153515, ¶¶ 75-76; *see also Gress v. Lakhani Hospitality, Inc.*, 2018 IL App (1st) 170380, ¶ 16 (innkeeper had duty to protect guest from rape by hotel employee); *Green v. Carlinville Community Unit School District No. 1*, 381 Ill. App. 3d 207, 212-13 (4th Dist. 2008) (school district had duty to protect student bus passenger from sexual assault by driver). "Illinois courts recognize that common carriers owe a heightened duty of care" to their passengers. *McNerney*, 2017 IL App (1st) 153515, ¶ 76. "The high duty of care owed by a common carrier to its passengers is 'premised on the carrier's *unique control over its passengers' safety*.'" *Id.* (quoting *Doe v. Sanchez*, 2016 IL App (2d) 150554, ¶ 39) (emphasis added).

The same is true in other contexts as well. *Gress*, 2018 IL App (1st) 170380, ¶ 16 ("since the ability of one of the parties to provide for his own protection has been limited in some way by his submission to the control of the other, a duty should be imposed upon the one possessing control (and thus the power to act) to take reasonable precautions to protect the other from assaults") (quoting *Hills v. Bridgeview Little League Ass'n*, 195 Ill. 2d 210, 244 (2000)). In fact, the same decisive element, control over another's

safety, self-evidently underlies all four of the traditional "special relationships," including the relationship between common carriers and their passengers—it is the common denominator.

Illinois common law has expanded the special relationship test and common carrier exception to impose the highest duty of care on transportation providers that are not common carriers, but nonetheless exercise control over their passengers' safety

Illinois courts have expanded this exception beyond common carriers to include transportation companies that do not meet the legal definition of a common carrier, but are sufficiently similar to common carriers to warrant application of the same heightened duty. For example, the appellate court in *Green v. Carlinville Community Unit School District No. 1* considered this issue in the context of public school buses, specifically doing so in a suit alleging that a bus driver sexually assaulted a student passenger, and answering whether the school district that provided the busing service owed its student passengers the highest duty of care. *Green*, 381 Ill. App. 3d at 209, 211. As Lyft contends here, the school district argued that it could not be held liable for sexual assaults committed by its drivers because it was not a common carrier and the trial court agreed, entering summary judgment in the school district's favor. *Id.* at 210.

The appellate court in *Green* had a different opinion. Although it agreed that the school district did not fit the legal definition a common carrier, the court found dispositive the fact that the school district was "performing the same basic function [as a common carrier], transporting individuals," and "[l]ike a passenger on a common carrier, a student on a school bus cannot ensure his or her own personal safety but must rely on the school district to provide fit employees to do so." *Id.* The appellate court thus concluded that school districts operating buses should and do owe their student passengers the highest

duty of care because, like common carrier passengers, the school district's passengers rely on the school district to supply safe drivers. *Id.* It is, in other words, a question of control and dependence. This is consistent with the appellate court's recognition in comparable contexts that "[a] special relationship exists where, *inter alia*, one voluntarily takes custody of another so as to deprive the other of his normal opportunities for protection." *Stearns v. Ridge Ambulance Svc., Inc.*, 2015 IL App (2d) 140908, ¶ 18 (further noting that "the term 'custody' is not used in a particularly technical sense"); *Gress*, 2018 IL App (1st) 170380, ¶ 16.

This decision was also consistent with the Restatement (Second) of Torts, which says that the four traditional "special relationships" (*i.e.*, common carrier/passenger, innkeeper/guest, landowner/invitee, and guardian/ward) "are not intended to be exclusive, and are not necessarily the only ones in which a duty of affirmative action for the aid or protection of another may be found." Restatement (Second) of Torts § 314(A), cmt. b. The Restatement thus explains that "[t]he law appears . . . to be working slowly toward a recognition of the duty to aid or protect in any relation of dependence." *Id.*; *see also Stearns*, 2015 IL App (2d) 140908, ¶ 18 (discussing the possibility that "in addition to the four [special relationships] that have been recognized" by Illinois courts, "there may be other special relationships that give rise to a duty").

The appellate court reached a similar conclusion in *Doe v. Sanchez*, another sexual assault case in which the court found (when reviewing the issue under Supreme Court Rule 308) that a private school bus contractor is not a common carrier, and expanded *Green* to hold that private busing companies owe their student passengers the same high duty of care that common carriers owe to their passengers. 2016 IL App (2d) 150554, ¶¶ 23, 33. The

court explained that the dispositive consideration was one of control. "[T]he high duty of care a common carrier owes its passengers is premised on the carrier's *unique control*over its passengers' safety." *Id.* ¶ 39 (emphasis added). "Likewise, a school bus driver is in unique control over the safety of students because he or she is often the only adult present during the commute." *Id.*

The reviewing court in *Sanchez* rejected the contractor's argument that it could not be held vicariously liable for its driver's sexual assault, explaining that, regardless of the *respondeat superior* doctrine, common carriers and transportation companies acting like common carriers have a "nondelegable duty" to protect their passengers' safety. *Id.* ¶¶ 46, 52, 50, 55. "[I]f the conduct of an employee violates a nondelegable duty of the employer, the employer may be liable regardless of whether the employee's misconduct took place within the scope of employment." *Id.* ¶ 50.

Illinois common law has therefore already evolved to recognize the need to impose the highest duty of care on transportation providers that are not common carriers, but nonetheless exercise a level of control over their passengers' safety, which creates a relationship of dependence and warrants the imposition of the same high duty of care imposed on common carriers. However, Illinois common law has not addressed whether that principle should apply to rideshare companies. Lyft has and will argue that this principle should not apply to it, and that *Green*and *Sanchez* should be narrowly limited to contexts involving students intentionally injured on school buses. But that argument ignores the logic underlying and connecting all the authority discussed above, which explains that the reason courts impose the highest duty of care on common carriers and non-common carriers alike (among other relationships) is because they have similar levels

of control over their passengers' safety. This relationship of control and dependence is one that Lyft does everything it can to foster for its business, regularly targeting its marketing at vulnerable demographics, especially young women, and then does everything it can to reject when presented with the harmful consequences. Lyft should not be permitted to claim the benefits of that relationship while disclaiming its costs and thereby forcing its victims to shoulder the terrible burden created by its recklessoperations.

Section 25(e) does not abrogate Lyft's common law duty to protect its passengers from attacks by its drivers

Lyft argues that Section 25(e) of the TNPA shields it from any duty to protect its passengers from attacks by its drivers and from any liability when those attacks occur because it is not a common carrier. Lyft further argues that *Green*and *Sanchez* should not be interpreted as applying to rideshare companies, even if they are like common carriers, because doing so would undermine the legislature's supposed intent of relieving rideshare companies from any duty and liability in circumstances like these, especially because *Green* predates the TNPA. In fact, under Illinois law, the opposite is true.

The assumption underpinning Lyft's position, that Section 25(e) allows it to evade its duty and any liability when its drivers attack its passengers, contradicts well-established principles governing legislative abrogation of common law.

> Common law rights and remedies remain in full force in this state unless *expressly* repealed by the legislature or modified by court decision. A legislative intent to alter or abrogate the common law must be *plainly*and *clearly* stated. As a consequence, "Illinois courts have limited all manner of statutes in derogation of the common law to their express language, in order to effect the least—rather than the most—alteration in the common law."

McIntosh v. Walgreens Boots Alliance, Inc., 2019 IL 123626, ¶ 30. (quoting *Rush Univ. Med. Ctr. v. Sessions*, 2012 IL 112906, ¶ 16) (citation omitted) (emphasis added).

If Section 25(e) removes Lyft's common law duty to protect its passengers, and essentially immunizes rideshare companies from vicarious liability for attacks committed by their drivers, it must do so "plainly," "clearly" and "expressly." *McIntosh*, 2019 IL 123626, ¶ 30. And yet, strictly construed, Section 25(e) addresses only whether rideshare companies are common carriers. That provision says *nothing* about whether rideshare companies can be held to the same high duty of care as common carriers because they exercise control over their passengers' safety, as the court found was true in *Green* and *Sanchez*—cases that likewise involved non-common carriers held to the same high duty of care. Section 25(e) could have been drafted to account for that gap, but it was not. Indeed, contrary to Lyft's position, the legislature is presumed to have been aware of the *Green*decision. *Ill. Landowners Alliance, NFP v. Ill. Commerce Comm'n*, 2017 IL 121302, ¶ 44 (courts presume the legislature is aware of their published decisions). Therefore, the fact that Section 25(e) does not plainly, clearly and expressly address this issue means that it does nothing to relieve Lyft of its relevant duty or to otherwise immunize Lyft from vicarious liability in situations like that at issue here.

Lyft, of course, disagrees, but the salient point for purposes of this application is that the issue of whether the reasoning applied in *Green* and *Sanchez* should be understood or expanded to protect the passengers of rideshare companies is a question of first impression. And the answer to that question affects not only Jane's ability to seek recompense in this case, but also the safety of millions more. Jane respectfully submits that if attacks like the one she suffered are to be redressed, and possibly prevented, this question should be answered immediately so that effect can be given to the legislators' stated purpose of enacting the TNPA—to "protect our constituent's safety." SR190.

B. The constitutionality of Section 25(e) of the TNPA is, for several reasons, also a question of first impression on which there are substantial grounds for differences of opinion.

1. The issue of whether Section 25(e) of the TNPA violates the constitutional ban on special legislation is a question of first impression.

Jane contends that Section 25(e) of the TNPA is unconstitutional for two reasons. First, Section 25(e) is unconstitutional special legislation. The Illinois Constitution provides that "[t]he General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const. 1970, art. IV, § 13. This clause "expressly prohibits the General Assembly from conferring a special benefit or exclusive privilege on a person or a group of persons to the exclusion of others similarly situated." *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 391 (1997).

The purpose and application of the Constitution's ban on special legislation

The prohibition against special legislation is meant "to prevent arbitrary legislative classifications that discriminate in favor of a select group without a sound, reasonable basis." *Best*, 179 Ill. 2d at 391. This ban arose in response to the General Assembly's abuse of the legislative process by favoring and enriching certain economic interests at the expense of others, and was designed to prevent the government from "'advance[ing] the interest of the few against the many . . . that the weak might be protected from the will of the strong . . . [and] that one class or interest should not flourish by the aid of the government, whilst another is oppressed with all the burdens.'" *Id.* at 391-92 (quoting I Debates and Proceedings of the Constitutional Convention of the State of Illinois 578 (remarks of Delegate Anderson)).

The Illinois Supreme Court has explained that "the prohibition against special legislation is the 'one provision in the legislative articles that specifically limits the lawmaking power of the General Assembly.'" *Id.* at 391 (citation omitted). The ban on special legislation is therefore not merely aspirational, but "deeply embedded in the constitutional jurisprudence of this state" (*id.* at 391), carrying with it unique and real force in our constitutional system to strike down legislation that favors one class or economic interest over another. *See, e.g., Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12 (2003) (striking provision of statute that conferred special protections on automobile dealers from consumer fraud claims); *Best*, 179 Ill. 2d 367 (striking legislative cap on noneconomic damages); *Wright v. Central Du Page Hosp. Ass'n*, 63 Ill. 2d 313 (1976) (striking cap on damages in medical malpractice actions); *Grace v. Howlett*, 51 Ill. 2d 478 (1972) (striking classifications that conditioned recovery for personal injuries on whether the negligent driver was using a vehicle for commercial or private purposes); *Skinner v. Anderson*, 38 Ill. 2d 455 (1967) (striking shortened statute of limitations for actions against architects and contractors); *Grasse v. Dealer's Transp. Co.*, 412 Ill. 179 (1952) (striking discriminatory classifications of employers, employees, and third-party tortfeasors in workers' compensation statute).

Whether legislation runs afoul of this prohibition involves a dual inquiry. Courts first ask whether the statutory provision at issue discriminates in favor of a select group and, if so, whether the classification created by the statutory provision is arbitrary. *Allen*, 208 Ill. 2d at 22. A special legislation challenge is generally judged under the same standards applicable to an equal protection challenge, although—importantly—its unique nature provides additional protection to those against whom the statute discriminates. *Best*,

179 Ill. 2d at 393. "The hallmark of an unconstitutional classification is its arbitrary application to similarly situated individuals without adequate justification or connection to the purpose of the statute." *Id.* at 396.

Where, as here, the statute or statutory provision under consideration does not affect a fundamental right or involve a subject classification, it is judged under the rational basis test. *Allen*, 208 Ill. 2d at 22. "Under this standard, a court must determine whether the statutory classification is rationally related to a legitimate State interest." *Best*, 179 Ill. 2d at 393 (internal quotation marks and citation omitted). Courts invalidate statutes under this test where they "have an artificially narrow focus and . . . appear to be designed primarily to confer a benefit on a particular private group without a reasonable basis, rather than to promote the general welfare." *Id.* at 395. To survive this inquiry, "'it must appear that the particular classification is based upon some real and substantial difference in kind, situation or circumstance in the persons or objects on which the classification rests, and which bears a rational relation to the evil to be remedied and the purpose to be attained by the statute.'" *Allen*, 208 Ill. 2d at 29 (quoting *Grasse*, 412 Ill. at 193-94).

The circuit court's misapplication of special legislation analysis

Here, the circuit court accepted that Section 25(e) of the TNPA discriminates in favor of ridesharing companies like Lyft, but, respectfully, the court failed to answer whether that classification was based on any real and substantial differences between rideshare companies and their competitors, and the court abrogated its responsibility to answer whether the basis for the legislature's discrimination is sufficiently related to a legitimate state interest. While the court said that it found the legislature's discrimination in favor of ridesharing companies was not arbitrary, it did not properly engage in the analysis needed to reach that conclusion, saying instead that it need not answer that

question because the legislature had already done so. SR278 (stating that "the Court is not currently tasked with determining whether TNCs and taxis are so distinguishable in kind as to warrant different governance [because] [t]he Illinois legislature has made that decision already"). The court simply concluded that the legislature meant to provide a competitive advantage to ridesharing companies and the court was obliged to defer to that decision by affirming the constitutionality of the TNPA. SR278-79.

Had the circuit court engaged in the required analysis, Jane respectfully suggests that it would have found that Section 25(e) is not adequately connected to the purpose of the TNPA to survive even rational basis review, nor is it based on any real and substantial difference between rideshare companies and their competitors. It is economic favoritism and nothing more.

Section 25(e) of the TNPA runs counter to the legislature's stated purpose of enacting the statute—to promote passenger safety

Courts examining whether a statutory provision constitutes special legislation look first to the stated purpose of the legislation and consider whether the portion challenged as special legislation promotes that purpose. *Allen*, 208 Ill. 2d at 29. Here, the stated purpose of the TNPA is to protect the public and passenger safety. As the bill's sponsor said, the TNPA was meant to "protect our constituent's safety [*sic*]," not shelter rideshare companies from legal liability when their drivers attack their passengers. SR190.

All but one of the TNPA's provisions promote some aspect of passenger safety. For instance, like taxicab regulations, the TNPA requires: criminal background screenings of drivers (625 ILCS 57/15); automobile liability insurance coverage (625 ILCS 57/10); zero-tolerance drug and alcohol policies (625 ILCS 57/25(a)-(c)); non-discrimination policies for the benefit of potential passengers (625 ILCS 57/20); and the provision of drivers'

personal identifying information to their passengers (625 ILCS 57/30(c)). The statute also contains a preemption provision clarifying that local governments, including home rule units, cannot regulate rideshare companies in a manner less restrictive than the TNPA, leaving room for supplemental safety regulations at the local level. 625 ILCS 57/32.

Standing in sharp relief from these and all other provisions of the TNPA is Section 25(e), the only provision that undermines, rather than promotes, passenger safety and the general welfare. Indeed, by specially sheltering ridesharing companies like Lyft from common carrier status, Section 25(e) not only potentially immunizes them from legal liability in cases like this, but as the trial court recognized it actually disincentivizes them from taking reasonable precautions to ensure their drivers do no harm to their passengers. SR280. This special protection thus undercuts the purpose of the legislation and promotes reckless behavior by rideshare companies, which can aggressively expand their operations with little or no legal consequence or concern about the quality of their drivers. This bears no rational relation to the protection of public and passenger safety.

When evaluating a statutory provision challenged as special legislation, "the court must consider the natural and reasonable effect of the legislation on the rights affected by the provision" to determine if it has a rational basis. *Best*, 179 Ill. 3d at 394. In *Grasse*, for example, the Supreme Court struck down a provision of the Workers' Compensation Act that automatically transferred to the employer, in some instances, an employee's common law right of action against a third-party tortfeasor. 412 Ill. 179. The provision had the effect of dividing injured employees into arbitrary classes based on whether or not the third-party tortfeasor was also bound by the act. One class was deprived of the right to recover compensatory damages from the tortfeasor while the other was not, despite the fact that the

victims in both classes might be equally free of fault. *Id.* at 196-97. The provision thus created a recovery gap. In fact, in some circumstances, such as where the employer was insolvent, it could work to deprive the injured employee of anyrecovery. *Id.* The Supreme Court held that this inequitable outcome, which was inconsistent with the ameliorative purpose of the statute, could not stand. *Id.* at 199.

The same is true here. Section 25(e) stands out as an anomaly from the remainder of the TNPA's purpose and it has the natural, probable, and perhaps inevitable consequence of denying victims of sexual assault and other similar misconduct a recovery. The circuit court described this as a "recovery gap" and suggested that "[t]he legislature may find this case and others like it to be an appropriate catalyst for revising the [TNPA]." SR279-80. The reality recognized by the court is that victims of sexual assault in these circumstances will generally not be able to recover much, if anything, from their attackers. Unless victims like Jane can show that a rideshare company violated a narrow band of other duties, such as a failure to adequately screen drivers, application of Section 25(e) may bar them from recovering anything, even from the rideshare companies that put them in their attackers' hands. This is no accident. It is precisely the inequitable outcome Lyft and Uber designed Section 25(e)—however imperfectly—to achieve. And yet the victim of a sexual assault at the hands of a taxicab driver would face no such bar, unless perhaps the taxicab driver was hailed through Lyft or Uber's app. Thus, as in *Grasse*, similarly situated plaintiffs would be subject to radically different outcomes for no reason but to protect a favored interest. This does nothing to advance the stated purpose of the TNPA.

Section 25(e) of the TNPA is not based on any real and substantial difference between rideshare companies and their competitors

There is also no difference between rideshare companies like Lyft and their taxicab competitors substantial enough to justify the discrimination embodied in Section 25(e). Lyft sells rides. The provision of transportation services to the public is its core function. While, in the context of litigation, Lyft usually characterizes itself as merely a technology company, that assertion ignores the reality of the situation and has been rightly rejected before. As the United States District Court for the Northern District of California stated in a case involving Uber:

> Uber's self-definition as a mere "technology company" focuses exclusively on the mechanics of its platform (*i.e.*, the use of internet enabled smartphones and software applications) rather than on the substance of what Uber actually does (*i.e.*, enable customers to book and receive rides). This is an unduly narrow frame. Uber engineered a software method toconnect drivers with passengers, but this is merely one instrumentality used in the context of its larger business. Uber does not simply sell software; it sells rides. Uber is no more a "technology company" than Yellow Cab is a "technology company" because it uses CB radios to dispatch taxi cabs . . . . Indeed, very few (if any) firms are not technology companies if one focuses solely on how they create or distribute their products. If, however, the focus is on the substance of what the firm actually does . . . it is clear that Uber is most certainly a transportation company, albeit a technologically sophisticated one. In fact, as noted above, Uber's own marketing bears this out, referring to Uber as "Everyone's Private Driver," and describing Uber as a "transportation system" and the "best transportation service in San Francisco."

O'Connor v. Uber Tech., Inc., 82 F. Supp. 3d 1133, 1141-42 (N.D. Cal. 2015); *but see Illinois Transportation Trade Association v. City of Chicago*, 839 F.3d 594 (7th Cir. 2016) (rejecting in distinguishable circumstances a claim that *any* difference in the regulation of rideshare and taxicab companies constituted an equal protectionviolation).

These statements apply with equal force to Lyft and to ridesharing companies generally. For instance, Lyft claims that its services are fundamentally different from

taxicab services because its vehicles are hailed through smartphone apps. But of course the same is true for taxicabs today, which have similar apps that passengers may use to hail rides. *See, e.g.*, http://mobileapp.gocurb.com. The TNPA even specifically allows taxicabs to use ridesharing companies' apps to transport passengers. 625 ILCS 57/30(f). Thus, in reality, that distinction is nonexistent. Lyft also directly compares itself to taxicab services in its marketing campaigns, and says on its website that it provides "a ride whenever you need one," further describing itself to the public as "your friend with a car," illustrating that, when outside of the courtroom, Lyft openly characterizes itself as a transportation company. Tracey Lien, *Lyft CEO Logan Green has a plan that's far bigger than ride-hailing*, Los Angeles Times (Aug. 12, 2016). Other purported differences relied on by ridesharing companies like Lyft to attempt distinguish themselves from taxicabs are equally illusory, as Jane will explain if this application is granted.

The point is that Lyft sells rides. It is as much in the business of selling transportation as taxicab, railroad, and bus companies. At bottom, rideshare companies are engaged in a for-profit enterprise based on the provision of transportation services, and there are no real and substantial differences between them and their more traditional competitors sufficient to justify the unique preference shown to them in Section 25(e) of the TNPA. Respectfully, the trial court erred in refusing to consider any of these facts and to analyze them in the required legal framework.

Nonetheless, as the trial court and parties agree, the question of whether Section 25(e) of the TNPA violates the Illinois Constitution's special legislation clause is a question of first impression, and thus a question on which substantial grounds for a difference of opinion exist. The trial court's decision reflects Lyft's position on that issue. Jane

disagrees, contending that the bill's content and legislative history demonstrates that the TNPA was meant to protect consumers, and Section 25(e) was added at the last moment by Uber and Lyft to absolve them of responsibility for their decision to prioritize profits over passenger safety. The legislature was, in the plainest terms, hoodwinked at the expense of our citizenry's safety. This is an issue of the gravest import. If attacks like the one Jane suffered here are to be redressed, and possibly prevented, it too is a question that must be answered now to protect Illinois' ridesharing public.

2. The issue of whether Section 25(e) of the TNPA violates the three-readings rule is also a question of first impression.

The Illinois Constitution requires that all bills "shall be read by title on three different days in each house" prior to passage. Ill. Const. art. IV, § 8(d). The object of this provision is to keep legislators advised of proposed legislation by calling it to their attention on three separate occasions. *Gibelhausen v. Daley*, 407 Ill. 25, 48 (1950). Although this constitutional requirement does not require the reading process start anew after each amendment, that is only true of amendments germane to the general subject matter of the original bill. *Id.* at 46. An amendment is "germane" in this context when there is a "common tie . . . in the tendency of the provision to promote the object and purpose of the act to which it belongs." *Id.* at 47. Therefore, where, as here, "there was a complete substitution of a new bill under the original number, dealing with a subject which was not akin or closely allied to the original bill, and which was not read three times in each House, after it has been so altered, [it is] in clear violation" of the three-readings rule. *Id.* at 48.

As described above, that is precisely what occurred with S.B. 2774, which addressed the regulation of public accountants and was wholly unrelated to House Amendment No. 1 (the TNPA), and yet was completely replaced by it at the last moment

of the legislative session, and in violation of the three readings requirement. SR145; SR149; SR161; SR165. This is exactly the kind of abuse of the legislative process that the three-readings rule was designed to end.

Admittedly, the Illinois Supreme Court has previously deferred to the legislature on this issue pursuant to the "enrolled-bill doctrine," viewing it as a separation of powers issue. *Geja's Café v. Metro. Pier & Expo. Auth.*, 153 Ill. 2d 239, 258-59 (1992). However the Supreme Court has also expressly reserved the right to revisit that question if, as demonstrated here, the legislature continues to abuse the legislative process and ignore this constitutional requirement. *Id.* at 260. If ever there were a case calling on the Supreme Court to revisit this issue, this is it. While this Court may not be able to make that decision, Jane raises the issue to preserve it for further review by the Supreme Court.

II. A definitive answer to these questions will materially advance the litigation.

The second prong for Rule 308 certification requires that the answer to the proposed question materially advance the litigation in some way. This requirement is generally interpreted as requiring that an answer to a certified question either be dispositive of the case or some substantial portion thereof. Further, Rule 308 is modeled on 28 U.S.C. § 1292(b), which is similar except that the federal rule explicitly requires the question raised be a "controlling" one. *See* Ill. S. Ct. R. 308, Comm. Cmts. (1979); *Schoonover v. American Family Ins. Group*, 230 Ill. App. 3d 65, 69 (4th Dist. 1992). Illinois courts thus often look to section 1292(b) jurisprudence when interpreting Rule 308, recognizing such authority "is important in interpreting the rule's provisions." *Voss v. Lincoln Mall Mgmt. Co.*, 166 Ill. App. 3d 442, 446 (1st Dist. 1988). And in the context of section 1292(b), the phrase "may materially advance the ultimate termination of the litigation" is interpreted liberally

to include the advancement of a potential settlement. *Sterk v. Redbox Automated Retail, LLC*, 672 F.3d 535, 536-37 (7th Cir. 2012).

Here, immediate resolution of the question of Lyft's duty to its passengers and its claimed immunity under Section 25(e) of the TNPA will be dispositive of a large part of this case. If the Court determines that Lyft may be held vicariously liable under Illinois law for attacks committed by its drivers on its passengers, then Lyft will be strongly incentivized to do all it can to avoid a trial at which its lax safety practices will fully be exposed to public scrutiny, and which will likely end with a sizeable verdict for Jane. A decision from this Court in Jane's favor will also fundamentally affect Lyft's legal exposure throughout the state and perhaps persuade Lyft to change its business practices to prioritize the safety of its passengers over maximizing profits. Conversely, if Lyft prevails, a substantial portion of Jane's claims in this case will be fully and finally resolved. A definitive resolution of these legal questions may therefore result in the disposal of all or a large part of this case. This second prong therefore also weighs heavily in favor of Rule 308 certification.

CONCLUSION

This case satisfies both requirements for certification under Supreme Court Rule 308. The first certification prong, necessitating a legal issue for which there is a substantial ground for difference of opinion, is satisfied several times over because this case presents multiple issues of first impression. And the second prong, necessitating a finding that an immediate appeal is likely to materially advance the ultimate termination of the litigation or some portion thereof, is also satisfied in the ways discussed immediately above. Aside from those requirements, however, Jane respectfully asks this Court to recognize that her case presents issues of the most serious and immediate import to public safety. The

question of Lyft's liability here will impact the safety of everyone in Illinois who uses ridesharing transportation, hopefully for the better.

WHEREFORE, and for all the reasons stated above, Plaintiff Jane Doe respectfully requests that this Court grant this application for leave to appeal pursuant to Illinois Supreme Court Rule 308 and thereby answer the following certified questions:

1. Does Section 25(e) of the Transportation Network Providers Act, 625 ILCS 57/25(e), which states that transportation network companies (TNCs) "are not common carriers," preclude TNCs, such as Lyft, from otherwise being subject to the highest duty of care under common law, like that of a common carrier's elevated dutyto its passengers?

2. If TNCs are precluded from being subject to a common carrier's elevated duty of care to passengers, is the Transportation Network Providers Act, including Section 25(e), a constitutional exercise of the legislature's power?

Jane further requests any other relief this Court deems appropriate.

Dated: July 1, 2019

Respectfully submitted,

JANE DOE, *Plaintiff-Movant*,

By: *s/ Jonathan B. Amarilio*
One of Her Attorneys

J. Timothy Eaton
Jonathan B. Amarilio
Allison E. Czerniak
Ioana M. Guset
TAFT STETTINIUS & HOLLISTER LLP
111 E. Wacker Drive, Suite 2800
Chicago, Illinois 60601
Tel.: 312.527.4000
teaton@taftlaw.com
jamarilio@taftlaw.com
acerniak@taftlaw.com
iguset@taftlaw.com

Timothy S. Tomasik
Patrick J. Giese
Patrick M. Grim
TOMASIK KOTIN KASSERMAN, LLC
161 N. Clark Street, Suite 3050 Chicago,
Illinois 60601
Tel.: 312.605.8800
tim@tkklaw.com

Attorneys for Plaintiff-Movant Jane Doe

EXHIBIT

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JANE DOE, Plaintiff, v. LYFT, INC.; ANGELO MCCOY; and STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS, Defendants.	No. 17 L 11355

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, JANE DOE, by and through her attorneys, TOMASIK KOTIN KASSERMAN, LLC, and complaining of the Defendants, LYFT, INC.; ANGELO MCCOY ("MCCOY"), and STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS ("STERLING"); states:

GENERAL ALLEGATIONS

I. Defendant LYFT – A Transportation Networking Company

1. This action arises from a calculated, violent, savage sexual assault perpetrated by LYFT driver MCCOY against LYFT passenger JANE DOE. On July 7, 2017 and into the early hours of July 8, 2017, LYFT driver MCCOY accosted JANE DOE with a knife, zip-tied JANE DOE's hands, and brutally and sexually assaulted JANE DOE in the back seat of a LYFT vehicle in a secluded alley. LYFT driver MCCOY's vicious attack on LYFT passenger JANE DOE included, but was not limited to, vaginal sexual assault.

2. After the vicious assault, LYFT driver MCCOY then drove from the alley. JANE DOE managed to escape from the LYFT vehicle when LYFT driver MCCOY stopped at a busy intersection on Chicago's north side.

3. Defendant LYFT, INC. ("LYFT" or "Company") is a popular and rapidly expanding "ride hailing" public transportation company and common or other transportation carrier, which exercises control over its passengers and provides transportation to the general public. As such, LYFT is directly liable for its negligent hiring, supervision and retention of LYFT driver MCCOY, directly liable for advertising misrepresentations holding out their transportation services as a safer alternative to taxis for women like plaintiff DOE, and is vicariously liable for its agents and employees, such as defendant MCCOY, under the doctrine of *respondeat superior* and because it owes its passengers a nondelegable duty of care. Accordingly, LYFT is vicariously liable for its employees' and actual and/or apparent agents' intentional and negligent torts, whether or not such acts are committed within the scope of employment. A common or other transportation carrier, which exercises control over its passengers and their safety, must exercise the highest degree of safety for its passengers.

4. Since its inception in 2008, LYFT has grown rapidly into a multi-billion dollar enterprise with operations throughout the United States. LYFT boasts on its web site of its recent $7.5 billion valuation as a result of its most recent funding round, closing at $600 million. (https://blog.lyft.com/posts/2017/4/10/lyft-raises-new-capital-to-continue-growth). LYFT's phenomenal growth is due in large part to lax hiring and security screening processes and evasion of regulations that make it easy for individuals to become LYFT drivers. At the same time, LYFT has fraudulently marketed itself as a safer, better alternative to other methods of transportation, particularly targeting young intoxicated women and late night passengers.

5. LYFT's conduct evidences a conscious attitude and corporate policy of "profits over people" characterized by a willful disregard of the rights and safety of its passengers.

6. LYFT is a transportation networking company that provides a mobile application as an online enabled platform connecting passengers with drivers using personal vehicles. LYFT is a wildly popular and rapidly expanding "transportation network company," whose digital smartphone application ("App") allows people to order and pay for rides through their phones. Since starting in San Francisco in December 2008, LYFT has grown to operate in approximately 552 cities in the United States. The Company had a reported 315,000 regularly active drivers by the end of 2015. In October 2016, LYFT's CEO indicated that the company was on track to complete 17 million rides for the month.

7. LYFT connects drivers and passengers through a downloadable App called "LYFT." Individuals who have downloaded the App use it to make a transportation request. LYFT matches the rider with a LYFT driver who, also signed into the LYFT App, picks up the rider and drives them to a destination. LYFT chooses what information to provide to the drivers and when to provide it. LYFT typically does not disclose the rider's destination until the ride begins. App users must pay LYFT for the ride with a credit card authorized through the App. LYFT establishes the rate for a given ride (rates are variable depending on demand levels, promotional deals, and other factors), collects the fare, pays the driver a share of the fare collected, and retains the remainder. LYFT drivers typically remain unaware of the total amount LYFT collects for a particular ride.

8. To provide rides quickly and efficiently, LYFT's business model requires a large pool of drivers to transport the general public. To accomplish this, LYFT solicits and retains tens of thousands of non-professional drivers. LYFT markets to potential drivers on its website, where

it states: "Whether you're trying to offset costs of your car, cover this month's bills, or fund your dreams, Lyft will get you there. So, go ahead. Be your own boss." After these drivers are hired by LYFT, LYFT makes the drivers available to the public to provide transportation services through its App.

A. LYFT – A Common or Other Transportation Carrier Under Illinois Law Exercising Control Over its Passengers.

9. LYFT offers to carry and transport members of the general public, and holds itself out to the public generally and provides such services for profit.

10. LYFT messaging and advertisements contain statements such as: "Riding with Lyft costs less than a taxi, which makes getting around wallet-friendly. Count on Lyft to get you around cities big and small, all over the United States." Thus, LYFT communicates that it is a transportation company providing rides to the general public. Other LYFT advertising states or otherwise suggests that it offers a safe alternative to other transportation providers.

11. In 2016, LYFT provided 160 million rides to members of the public, up from 53 million in 2015.

12. LYFT is available to the general public through the App available for anyone to download on a smartphone.

13. Neither drivers nor riders are charged a fee to download the LYFT App. LYFT's sole source of revenue is from charges to riders for trips taken.

14. LYFT charges customers standardized fees for car rides, setting its fare prices without driver input. Drivers may not negotiate fares.

15. LYFT policy prohibits drivers from refusing to provide services based on race, national origin, religion, gender, gender identity, physical or mental disability, medical condition, marital status, age, or sexual orientation.

16. LYFT expects its drivers to comply with all relevant state, federal, and local laws governing the transportation of riders with disabilities, including transporting service animals. LYFT specifically instructs its drivers on accessibility for riders with disabilities.

B. LYFT Employs Tens of Thousands of Drivers Who Lack Specialized Skills

17. LYFT's business model depends on having a large pool of non-professional drivers to transport the general public.

18. There are no specialized skills needed to drive for LYFT. By its own admission, anyone can drive for LYFT if they meet the minimum requirements of being over 21 years of age with a valid U.S. driver's license, at least one year of driving experience in the U.S., and an eligible four-door vehicle. LYFT does not charge a fee for driver applications.

19. By its own admission, jurisdictions that have strict regulations on driver qualifications make it difficult for LYFT to hire enough drivers.

20. LYFT controls its drivers' contacts with its customer base and considers its customer list to be proprietary information.

21. LYFT does not charge drivers a fee to receive notifications of ride requests mediated through the LYFT App.

22. LYFT's fare prices for riders are set exclusively by the Company and its executives. Drivers have no input on fares charged to customers. Drivers are not permitted to negotiate with customers on fares charged. LYFT retains the right and the ability to adjust charges to riders if the Company determines that a driver took a circuitous route to a destination.

23. LYFT processes the fare for each ride. It does not give the drivers information about the amount of the fare charged to the riders. LYFT then pays the drivers directly.

24. LYFT provides auto insurance for drivers that do not maintain sufficient insurance on their own. Insurance provided by LYFT covers incidents occurring while a driver is connected online with the LYFT App, with coverage increasing when a passenger is in the vehicle.

25. LYFT provides its drivers with logo stickers for their windshield and rear window and trains them that these stickers must be displayed in a uniform manner.

26. LYFT attempts to impose uniformity in the conduct of its drivers. LYFT policy mandates that all drivers: (i) Dress professionally; (ii) Send the customers requesting rides a text message when the driver is 1-2 minutes away from the pickup location; (iii) Keep the radio either off or on "soft jazz or NPR;" (iv) Open the door for riders; (v) Pick up customers on the correct side of the street where the customer is standing; (vi) In some cities, LYFT requires drivers to display a LYFT sign in the windshield; and (vii) LYFT encourages drivers to offer breath mints and water to riders.

27. LYFT retains a fee of approximately 20-25% of every ride charged to a customer.

28. LYFT retains the right to terminate drivers at will, with or without cause. LYFT uses rider feedback to discipline or terminate drivers.

29. LYFT processes and deals with customer complaints regarding drivers, and maintains the driver rating system used by customers.

30. In some locations, LYFT rewards drivers that maintain a high acceptance rate for ride requests, total number of hours online, total number of completed trips, and positive customer rating by providing a "Power Driver Bonus" and an "Average Hourly Guarantee" that sets a specific hourly pay that drivers receive, tantamount to a wage.

31. At times, LYFT incentivizes drivers to remain employees by paying a minimum rate to log into the App, accept 90% of ride requests, and be online 50 out of 60 minutes. The result

of such incentive programs is that drivers are guaranteed a minimum amount of pay from LYFT regardless of actual work performed, tantamount to a salary.

C. Systemic Deficiencies in LYFT's Employment and Supervision of its Drivers

32. To become a driver for LYFT, individuals apply through LYFT's website. The application process is entirely online and involves filling out a few short forms and uploading photos of a driver's license, vehicle registration, and proof of insurance. LYFT does not verify that the documents submitted are accurate or actually pertain to theapplicant.

33. LYFT does not verify vehicle ownership. Rather, it only requires that the vehicle is registered and is not more than twelve years old.

34. Neither LYFT nor its third-party vendors require driver applicants to attend training classes on driving skills or using mobile Apps while driving.

35. Neither LYFT nor its third-party vendors require driver applicants to pass road vehicle tests or vision and hearing exams.

36. LYFT is and has been aware that its security screening processes are insufficient to prevent incompetent and unsafe applicants from successfully registering as LYFT drivers.

37. Upon information and belief, LYFT lobbies state and local governments to allow LYFT to conduct its own background checks of driver applicants instead of having municipalities perform the more stringent security screening applied to traditional taxi drivers. LYFT has successfully persuaded lawmakers in several states to keep background check requirements for its drivers limited.

38. Upon information and belief, even where authorized to do so, however, LYFT does not perform its own background checks. Rather, LYFT generally outsources background checks of driver applicants to third party vendors, such as Defendant STERLING, that do not perform

stringent background checks. The background checks run potential drivers' social security numbers through databases similar to those held by private credit agencies, which only go back for a period of seven years and do not capture all arrests and/or convictions. The background checks conducted by private companies for LYFT do not require fingerprinting for comparison against Department of Justice, Federal Bureau of Investigation, and Chicago Police Department databases. Neither LYFT nor the third-party vendors it uses for background checks verifies that the information provided by applicants is accurate or complete.

39. In Chicago, it has been reported that the city of Chicago has demanded that LYFT replace its background checker, Defendant STERLING, review all of its drivers, and conduct random audits.

40. The application process to become a LYFT driver is simple, fast, and designed to allow the Company to hire as many drivers as possible while incurring minimal associated costs. Such cost saving, however, is at the expense of riders, especially female riders. Specifically, at no time during the application process does LYFT or its third-party background check vendor, acting on LYFT's behalf, do any of the following: (i) Conduct Live Scan biometric fingerprint background checks of applicants; (ii) Conduct in-person interviews of applicants; (iii) Verify vehicle ownership; (iv) Verify that social security numbers and other personal identification numbers submitted in the application process in fact belong to the applicants; (v) Require applicants to attend training classes on driving skills; (vi) Require applicants to attend training classes to prevent harassment, including sexual harassment of customers; (vii) Require applicants to attend training classes to hone skills needed to safely use mobile Apps while driving; (viii) Require applicants to pass written examinations beyond basic "city knowledge" tests; (ix) Require applicants to pass road vehicle tests; and (x) Require applicants to pass vision and hearing exams.

41. As a result of LYFT's deficient security screening, drivers who have been arrested, charged, and/or convicted of violent crimes, theft, armed robbery, DWI, driving with a suspended license, and multiple moving violations successfully register as LYFT drivers and can and do get matched with LYFT ride requests through the LYFT App, exposing riders to dangerous and potentially violent situations without their knowledge.

42. LYFT does not verify that the individual operating a vehicle is the individual registered as a LYFT driver. Thus, even if applicants do not pass the LYFT security screening process, it is still possible for such individuals to pick up LYFT customers as ostensible LYFT drivers.

43. LYFT does nothing to ensure that its drivers are not intoxicated or under the influence of drugs or medication while providing transportation for LYFT customers.

44. LYFT does not verify whether its drivers are armed or concealing any weapons when they pick up LYFT customers.

45. Because of LYFT's deficient security screening, its customers have no idea with whom they are riding.

46. According to www.whosdrivingyou.org, at the time of filing this complaint, drivers for LYFT and other ride-sharing companies have allegedly perpetrated 333 sexual assaults, 78 assaults, 14 kidnappings, and have been responsible for 40 deaths.

47. Concerns about inadequate screening and the threat LYFT drivers pose to their riders are well known to LYFT and its executives. In the years 2015 and 2016 alone, dozens of crimes committed by LYFT drivers against their riders were reported, ranging from theft to sexual assault, kidnapping, and rape. LYFT drivers have also been reported driving drunk.

48. LYFT has placed profits over safety by deliberately lowering the bar for drivers in

order to rapidly expand its network of drivers and, thus, its profits. This is a calculated decision by senior executives to allow LYFT to dominate the emerging rideshare market at the expense of public safety.

49. LYFT has accomplished its aggressive expansion by inviting people without skills or experience to become LYFT drivers, flouting licensing laws and vehicle safety and consumer protection regulations, implementing lax hiring standards, and making it as easy as possible for anyone to become and remain a driver.

50. Consistent with its policy of putting profits before public safety, LYFT deliberately focuses its hiring and retention efforts on branding and appearances, encouraging clean dress, and encouraging drivers to offer water and mints to customers, while simultaneously avoiding rigorous background checks and other efforts aimed at safety. LYFT holds itself out as a safe, reliable provider of transportation services with the standards of safety that consumers expect from a large, reputable, well-run corporation.

51. Crimes committed by LYFT drivers have become so commonplace that LYFT has prepared and recycled on numerous occasions a canned statement expressing regret but assuring the news media that LYFT "stands ready" to assist in subsequentinvestigations:

a. In a November 2, 2017 statement to the media following an alleged rape of a LYFT passenger by a LYFT driver in Austin, Texas, LYFT issued the following statement: "These allegations are incredibly disturbing. . . .[W]e stand ready to assist law enforcement."

b. In an October 8, 2017 statement to the media following an alleged kidnapping of LYFT passengers near Orlando, Florida, LYFT issued the following statement: "What's being described here is completely inappropriate. . . . We stand ready to assist law enforcement in any investigation."

c. In an August 3, 2017 statement to the media following an alleged rape of a LYFT passenger by a LYFT driver in Rancho Bernardo, California, LYFT issued the following statement: "What is being described here is horrifying. . . . We have

reached out to law enforcement for additional information and stand ready to assist in their investigation."

d. In a July 24, 2017 statement to the media following the incident alleged in this Complaint, LYFT issued the following statement: "These allegations are sickening and horrifying . . . We stand ready to assist law enforcement in their investigation."

52. Despite LYFT's assurances that it "stands ready to cooperate with law enforcement," in JANE DOE's case, LYFT failed to respond to inquiries from the Chicago Police Department and did not operate a 24 hour help line for overnight Chicago Police Department officers to contact in furtherance of their investigation.

D. LYFT Fraudulently Markets Itself as a Safer, Better Alternative to Taxis

53. Nevertheless, LYFT has misled and continues to knowingly mislead the public about the safety and security measures it employs to protect its passengers. Despite the known deficiencies in LYFT's security screening processes, LYFT holds itself out to the public as "safe." Rather than inform riders of its security failures or correct the flaws, LYFT presents itself to customers as "design[ing] safety into every part of LYFT."

54. LYFT has misrepresented to its customers on its website that: "Safety is our top priority and it is our goal to make every ride safe, comfortable, and reliable. Since the beginning, we have worked hard to design policies and features that protect our community. People say they use LYFT because they feel safe with our drivers, which is a product of this commitment."

55. LYFT has actively fostered and successfully cultivated an image among its customers of safety and superiority to public transportation and traditional taxis.

56. LYFT has not taken steps to correct its public image of safety. Instead, because of LYFT's ongoing aggressive marketing, most LYFT customers are generally unaware of the real risks presented by LYFT's own drivers, and continue to believe a ride with LYFT is a safer and better alternative.

57. Though, in certain circumstances, a LYFT ride can be less expensive than a traditional taxi, LYFT rides are often more expensive. This is true, in part, because of a practice called "prime time" pricing, in which LYFT unilaterally increases its fees by a multiplier based on demand conditions. While intended to ensure that rides go to those who need them most, in effect, prime time pricing ensures that rides during peak hours go to those willing to pay the most.

58. Riders, such as plaintiff JANE DOE reasonably rely on LYFT's representations and promises about its safety and security measures including driver screening and background check procedures. LYFT's riders choose to utilize LYFT's service as a result of this reliance.

E. LYFT's Marketing Targets Intoxicated Female Riders

59. As part of marketing itself as a better, safer alternative, LYFT particularly targets the market of intoxicated, late night riders. By its own admission, LYFT is "your new designated driver."

60. In 2016, LYFT collaborated with Budweiser to "combat drunk driving." The press release goes on to state "everybody deserves a designated driver, even if you are on a tight budget."

61. LYFT does not inform its riders that hailing a ride after drinking also puts those same riders in peril from the LYFT drivers themselves. The safe and stylish image LYFT aggressively cultivates suggests to its customers that riding while intoxicated with LYFT is safer than doing the same with a traditional taxi. By marketing heavily to young persons who have been drinking, while claiming that rider safety is its top priority, LYFT is actually putting its customers at grave risk.

62. LYFT knew that its representations and promises about rider safety were false and misleading, yet continued to allow its passengers to believe in the truth of its representations and promises, and to profit from its passengers' reliance on such representations and promises.

F. LYFT Knew Its Representations About Safety Were False, and Knew that Its Hiring Processes Were Deficient

63. Based on the aforementioned, sexual assaults by LYFT drivers against passengers are not isolated or rare occurrences. They are part of a known pattern of heinous, but avoidable, attacks.

64. Upon information and belief, due to general underreporting of sexual crimes, these media-reported assaults represent only a small fraction of the number of actual sexual assaults perpetrated by LYFT drivers against riders.

65. Upon information and belief, LYFT operated its business with knowledge of the weaknesses in screening procedures but accepted those weaknesses because those weaknesses facilitated and permitted LYFT to hire more (though unsafe) drivers to increase the size of LYFT's fleet. LYFT actively pushed its background check contractors to increase speed over quality, which invited mistakes and permitted dangerous drivers, like MCCOY, to be approved to drive for LYFT, despite that his background included information demonstrating that he would be dangerous to LYFT customers.

G. MCCOY was an Actual and/or Apparent Agent of LYFT, a Common or Other Transportation Carrier Exercising Control Over its Passengers, and LYFT is Liable for Intentional Torts Under Illinois Law

66. At all times relevant, plaintiff JANE DOE relied on LYFT's calculated, targeted marketing, including the cloaking of the LYFT vehicle with LYFT trade dress, to inform her belief that MCCOY was an actual and/or apparent agent of LYFT.

67. At all times relevant, LYFT held itself out as a provider of transportation services, and safe transportation services, and JANE DOE neither knew nor should have known that MCCOY was not an employee or agent of LYFT.

68. At all times relevant, JANE DOE did not choose MCCOY, but relied upon LYFT to provide safe transportation services.

H. LYFT Knew or Should Have Known that MCCOY Has a Criminal History That Included Charges for Theft, DUI, and Multiple Weapons Charges, That Made Him a Danger to LYFT Passengers, Including JANE DOE

69. On or around December 10, 2013, MCCOY was arrested for and charged with retail theft, a crime of dishonesty and sentenced on January 3, 2014.

70. On or around March 6, 2003, MCCOY was arrested for and charged with possession of cannabis.

71. On or around September 5, 1999, MCCOY was arrested for and charged with driving under the influence of alcohol.

72. On or around February 21, 1998, MCCOY was arrested for and charged with possession of cannabis.

73. On or around October 17, 1994, MCCOY was arrested for and charged with possession of a firearm, and convicted on March 8, 1995.

74. On or around August 6, 1989 was arrested for and charged with participating in mob action and failing to disperse.

75. On March 12, 1986, MCCOY was arrested for and charged with unlawful use of a weapon.

I. Following the Sexual Attack, LYFT Cut Off JANE DOE's Access to the LYFT App, and After JANE DOE Reported the Horrific Sexual Assault She Had Endured, LYFT Emailed and Referred JANE DOE to lyft.com/help

76. On or around July 8, 2017, JANE DOE reported to LYFT that one of its drivers had sexually assaulted her.

77. LYFT's "Trust & Safety" Department responded that they were "happy to cooperate" with law enforcement, but only upon receipt of "a subpoena or formal legal order."

78. In a particularly callous and indifferent response, rather than provide assistance, LYFT cut off JANE DOE's access to the LYFT App and referred her to a generic "Help" portion of LYFT's website: http://lyft.com/help.

II. Plaintiff, JANE DOE

79. At all relevant times, Plaintiff JANE DOE resided in Cook County, Illinois.

80. Plaintiff JANE DOE began using LYFT long before the incident. JANE DOE believed and relied on LYFT's targeted, focused marketing and representations that it was a safe, high-quality car service. She believed LYFT was safe based on LYFT advertising, and from her experience taking LYFT rides with friends who already had the LYFT App. She rode in cars decorated with the LYFT logo and trade dress, and was impressed by the deliberate appearance, which LYFT had cultivated, that these were well-maintained, clean cars, driven by professional LYFT drivers employed by LYFT. At all relevant times, JANE DOE believed that LYFT was a well-operated and well-managed, reputable corporation that employed safe drivers.

81. The LYFT logo has gained a near iconic status on roads in Chicago and nationwide, and was instantly recognizable to JANE DOE:

82. For years before the incident, plaintiff JANE DOE saw numerous LYFT advertisements representing that LYFT offered safer and cleaner rides than taxis provided, and

that it was a safe and reliable option for female passengers. She was exposed to this advertising in a variety of ways, including contact through email, internet advertising, local advertising, and through the App itself.

83. Plaintiff JANE DOE relied on and continued to rely on LYFT's advertisements regarding safety, professionalism, and reliability in choosing to ride with LYFT on a repeat basis.

84. At approximately 11:00 p.m. on July 7, 2017, Plaintiff JANE DOE ordered a LYFT vehicle using the LYFT App.

85. Shortly thereafter, LYFT driver MCCOY picked up plaintiff JANE DOE. She got into his vehicle based on her understanding that he was a professional driver, that he was a LYFT employee acting on LYFT's behalf, and that he was vetted by LYFT and held to what she believed were LYFT's high standards of safety and professionalism.

86. Immediately following plaintiff JANE DOE's entering the vehicle, and unbeknownst to JANE DOE, MCCOY cancelled the ride and travelled away from plaintiff JANE DOE's intended destination. JANE DOE sat in the back seat of the LYFT vehicle. JANE DOE fell asleep shortly after entering the vehicle. After driving for approximately 15 minutes, MCCOY pulled the LYFT vehicle into a secluded alley on Chicago's north side.

87. Shortly after parking in the secluded alley, MCCOY exited the LYFT vehicle, and re-entered the vehicle through a rear door. LYFT driver MCCOY took LYFT passenger JANE DOE's smartphone. LYFT driver MCCOY then brandished and threatened LYFT passenger JANE DOE with a knife, before zip-tying her hands. LYFT driver MCCOY then repeatedly, violently, and savagely sexually assaulted JANE DOE.

III. LYFT'S Terms And Conditions Are Not Binding On Plaintiff

88. When a prospective customer downloads the LYFT App to her phone, she is directed to a screen bearing the Lyft logo, and the registration process can be completed without opening or viewing the Terms and Conditions.

89. At no point did plaintiff JANE DOE assent to or agree to the Terms and Conditions to the LYFT App.

90. At no point did LYFT require that she view the Terms and Conditions.

91. At no point did LYFT require that she open an electronic link to the Terms and Conditions, nor did the App make it appear that there was a link she could follow to read the Terms and Conditions.

92. At no point was plaintiff JANE DOE asked to affirm that she had read the Terms and Conditions.

93. The full Terms and Conditions were never mailed, emailed, or otherwise provided to plaintiff JANE DOE.

94. The Terms and Conditions are deliberately hidden, and difficult to access, navigate, and read should a rider wish to find them.

95. LYFT retains the exclusive right to unilaterally change the Terms and Conditions. It includes a provision in its Terms and Conditions that contractual changes are effective once posted on its website.

96. Plaintiff JANE DOE was not provided conspicuous notice of the existence of applicable contract terms when she downloaded the App.

97. Plaintiff JANE DOE was not required to, nor did she, review anyapplicable contract terms.

COUNT I

JANE DOE v. LYFT, INC.

Negligence, Negligent Hiring, Negligent Supervision and Negligent Retention

1-96. Plaintiff realleges and repeats paragraphs 1 - 96, as though fully set forth herein.

98. LYFT owed plaintiff JANE DOE a duty of reasonable care in the hiring, training, and supervision of its drivers.

99. On and before July 7, 2017, LYFT breached that duty in one or more of the following respects:

a. Failed to conduct an adequate background check of MCCOY;

b. Failed to deny MCCOY authority to operate as a LYFT driver;

c. Permitted MCCOY to pose a danger and threat to the riding public, including plaintiff JANE DOE;

d. Failed to conduct an in-person interview of MCCOY to determine his fitness to engage with vulnerable riders, such as plaintiff JANE DOE;

e. Failed to conduct Live Scan biometric fingerprint background checks of applicants;

f. Failed to conduct in-person interviews of applicants; and/or

g. Failed to require applicants to attend training classes to prevent harassment, including sexual harassment of customers.

100. As a proximate result of one or more of the aforementioned negligent acts, plaintiff was caused to be violently attacked and sexually assaulted, and suffered severe and permanent personal and pecuniary injuries.

WHEREFORE, Plaintiff JANE DOE, demands judgment against LYFT, INC. in an amount in excess of the minimum amount required for jurisdiction in the Law Division of the Circuit Court of Cook County.

COUNT II

JANE DOE v. LYFT, INC.

Fraud

1-96. Plaintiff realleges and repeats paragraphs 1 - 96, as though fully set forth herein.

97. LYFT made false representations and false promises.

98. LYFT falsely represented to plaintiff JANE DOE that it provided a safe alternative to driving at night after drinking. LYFT represented that its drivers were properly screened and were safe. LYFT promised that it was better and safer than a taxi or public transit. LYFT promised plaintiff JANE DOE the safest ride possible.

99. LYFT falsely represented to plaintiff JANE DOE that its rides were safe and that its drivers were safe.

100. LYFT knew these representations were false and intended for customers like JANE DOE to rely on them.

101. LYFT knew that its security screening was deficient, that its background checks were below industry standards and that its drivers were not trained or supervised, or given sexual harassment and abuse standards. LYFT knew that numerous women had been assaulted by LYFT drivers. LYFT knew that it was not safe for intoxicated women to get into cars with its drivers. LYFT intentionally concealed these facts and deliberately represented the opposite – that its drivers offered the safest options for solo women who have consumed alcohol seeking late night transportation.

102. Plaintiff JANE DOE relied on LYFT's deliberate misrepresentations to her detriment, which caused her serious, permanent harm. If plaintiff JANE DOE had known the facts LYFT concealed about its service, its security screening, and its drivers, she would not have accepted a ride with MCCOY. LYFT failed to provide plaintiff JANE DOE with a safe ride.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against LYFT, INC. in an amount greater than the jurisdictional limit of the Law Division of the Circuit Court of Cook County.

COUNT III

JANE DOE v. LYFT, INC.

Assault and Battery

1-96. Plaintiff realleges and repeats paragraphs 1 - 96, as though fully set forth herein.

97. At all times relevant, MCCOY was acting within the scope of his employment as an actual and/or apparent agent of LYFT, INC. when he accepted the fare via the LYFT app and picked up JANE DOE, and at all relevant times.

98. At all times relevant, JANE DOE was a lawful passenger in the aforementioned LYFT vehicle, which was being operated for the benefit of LYFT,INC.

99. At said time and place, MCCOY made unwanted and unpermitted sexual physical contact with JANE DOE that included, but was not limited to, vaginal sexual assault, and continued to make contact with JANE DOE despite her objections and physical attempts to stop him.

100. The aforementioned contact by MCCOY was without the consent of JANE DOE and was without provocation, cause or necessity.

101. LYFT, INC., as a common or other transportation carrier exercising control over its passengers and their safety, owed the highest and nondelegable duty of care to provide a safe environment for its patrons that were lawfully in its vehicles.

102. At the time and place aforesaid, the plaintiff was injured physically and emotionally as a direct result of the assault and battery by MCCOY, individually, and as an actual and/or apparent agent of LYFT, INC.

103. As a direct and proximate result of the aforesaid sexual assault and battery of the Defendants, JANE DOE was then and there caused to suffer extreme anguish, pain and suffering, and will in the future suffer extreme mental anguish, pain and suffering, all of which injuries are permanent and they have been and will keep JANE DOE from attending to her ordinary affairs and duties and have caused her to become liable for large sums of money for medical and hospital care and attention.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against LYFT, INC. in an amount greater than the jurisdictional limit of the Law Division of the Circuit Court of Cook County.

COUNT IV

JANE DOE v. LYFT, INC.

False Imprisonment

1-96. Plaintiff realleges and repeats paragraphs 1 - 96, as though fully set forth herein.

97. LYFT driver MCCOY, as an actual and/or apparent agent and/or employee, refused to let JANE DOE exit his car. As a result, JANE DOE was confined in the LYFT vehicle against her will.

98. LYFT driver MCCOY intentionally deprived JANE DOE of her freedom of movement by use of physical barriers, force, threats of force, and menace.

99. The confinement compelled JANE DOE to stay in the car for some time against her will and without her consent.

100. JANE DOE was harmed by MCCOY's conduct.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against LYFT, INC. in an amount greater than the jurisdictional limit of the Law Division of the Circuit Court of Cook County.

COUNT V

JANE DOE v. ANGELO MCCOY

Assault and Battery

1-96. Plaintiff realleges and repeats paragraphs 1 - 96, as though fully set forth herein.

97. At said time and place, MCCOY made unwanted and unpermitted sexual physical contact with JANE DOE that included, but was not limited to, vaginal sexual assault, and continued to make contact with JANE DOE despite her objections and physical attempts to stop him.

98. The aforementioned contact by MCCOY was without the consent of JANE DOE and was without provocation, cause or necessity.

99. At the time and place aforesaid, the plaintiff was injured physically and emotionally as a direct result of the assault and battery by MCCOY.

100. As a direct and proximate result of the aforesaid sexual assault and battery of the Defendants, JANE DOE was then and there caused to suffer extreme anguish, pain and suffering, and will in the future suffer extreme mental anguish, pain and suffering, all of which injuries are permanent and they have been and will keep JANE DOE from attending to her ordinary affairs

and duties and have caused her to become liable for large sums of money for medical and hospital care and attention.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against ANGELO MCCOY in an amount greater than the jurisdictional limit of the Law Division of the Circuit Court of Cook County.

COUNT VI

JANE DOE v. MCCOY

False Imprisonment

1-96. Plaintiff realleges and repeats paragraphs 1 - 96, as though fully set forth herein.

97. LYFT driver MCCOY, as an actual and/or apparent agent and/or employee, refused to let JANE DOE exit his car. As a result, JANE DOE was confined in the LYFT vehicle against her will.

98. LYFT driver MCCOY intentionally deprived JANE DOE of her freedom of movement by use of physical barriers, force, threats of force, and menace.

99. The confinement compelled JANE DOE to stay in the car for some time against her will and without her consent.

100. JANE DOE was harmed by MCCOY's conduct.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against ANGELO MCCOY in an amount greater than the jurisdictional limit of the Law Division of the Circuit Court of Cook County.

COUNT VII

JANE DOE v. STERLING TALENT SOLUTIONS

Negligence

1-96. Plaintiff adopts and alleges paragraphs 1-96 as though fully set forth herein.

97. On and before July 7, 2017, STERLING was a corporation in the business of providing commercial criminal background checks doing business in Chicago, Cook County, Illinois.

98. On and before said time and place, STERLING had a registered agent at 801 Adlai Stevenson Drive in Springfield, Illinois.

99. Before said time and place, STERLING contracted with Defendant LYFT, INC., to conduct criminal background checks of potential LYFT drivers who would be operating LYFT vehicles in Chicago, Cook County, Illinois.

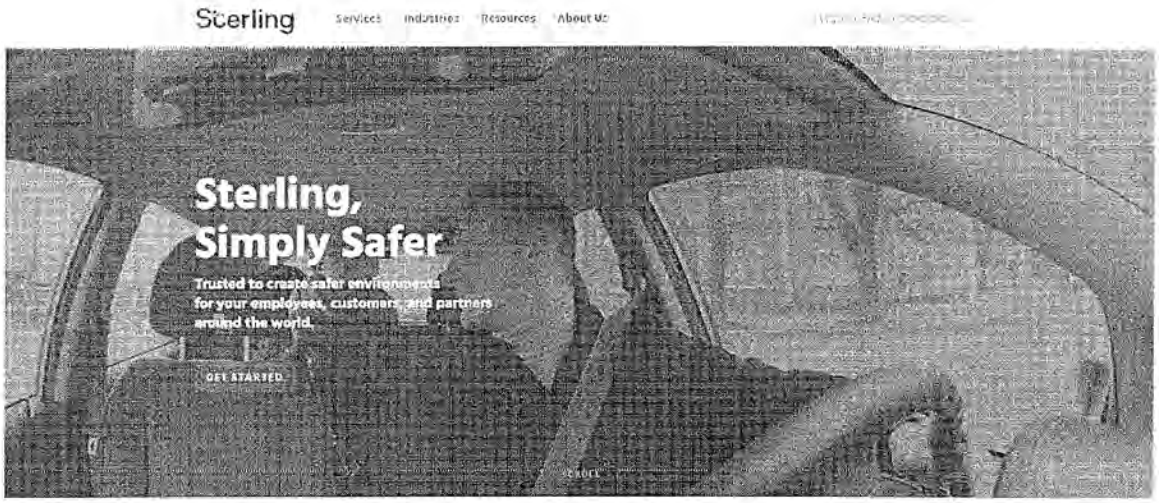
100. Before said time and place, STERLING conducted criminal background checks of LYFT drivers, including ANGELO MCCOY.

101. At all relevant times, STERLING has marketed itself as providing "comprehensive background screening services."

102. At all relevant times, STERLING has marketed itself specifically to the "sharing/gig economy" including LYFT, INC.

103. At all relevant times, STERLING has marketed itself and stated its "commitment to keep companies and consumers safe."

104. At all relevant times, STERLING has marketed itself as being "trusted to create safer environments for your . . . customers." For instance, STERLING has brandished this slogan on its web site across a video of a driver providing ride shareservices:



105. Media have reported the many failures in STERLING's background checking process, including difficult or impossible time crunches and inadequate labor forces, that have led to the hiring of sex offenders, violent criminals, and at least one driver who has been sentenced to prison for 90 months on charges of aiding terrorism.

106. Media have reported that STERLING had a "maniacal focus on growth" that STERLING employees believed contributed to an environment that was prone to errors.

107. At all relevant times, and upon information and belief, STERLING's business platform was built on speed instead of accuracy, which led to numerous mistakes, including failing to report to LYFT what may have been a disqualifying theft conviction for MCCOY.

108. On and before said time and place, STERLING had a duty to exercise ordinary care to guard against injuries which naturally flow as a reasonably probable and foreseeable consequence of its actions, which included the duty to guard LYFT passengers like JANE DOE from the consequences of failing to adequately screen drivers with criminal backgrounds.

109. On and before said time and place, STERLING, was negligent in one or more of the following respects:

a. Failed to conduct an adequate background check of ANGELO MCCOY; and/or

b. Failed to report to Lyft criminal conviction(s) that would have disqualified ANGELO MCCOY from driving for Lyft.

110. As a proximate result of one or more of the foregoing negligent acts and/or omissions of Defendant, STERLING, Plaintiff was sexually assaulted, and suffered personal and pecuniary injuries.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against Defendant, STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS, in an amount in excess of the minimum amount required for jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

COUNT VIII

JANE DOE v. STERLING TALENT SOLUTIONS

Negligence – Voluntary Undertaking (Pled in the Alternative)

1-96. Plaintiff adopts and alleges paragraphs 1-96 as though fully set forth herein.

97. On and before July 7, 2017, STERLING was a corporation in the business of providing commercial criminal background checks doing business in Chicago, Cook County, Illinois.

98. On and before said time and place, STERLING had a registered agent at 801 Adlai Stevenson Drive in Springfield, Illinois.

99. Before said time and place, STERLING contracted with Defendant LYFT, INC., and/or Defendant, LYFT ILLINOIS, INC., to conduct criminal background checks of potential LYFT drivers who would be operating LYFT vehicles in Chicago, Cook County, Illinois.

100. Before said time and place, STERLING conducted criminal background checks of LYFT drivers, including ANGELO MCCOY.

101. On and before said time and place, STERLING voluntarily undertook a duty to exercise reasonable care in conducting background checks of LYFT drivers who transport members of the general public, including JANE DOE.

102. On and before said time and place, STERLING, was negligent in one or more of the following respects:

a. Failed to conduct an adequate background check of ANGELO MCCOY; and/or

b. Failed to report to Lyft criminal conviction(s) that would have disqualified ANGELO MCCOY from driving for Lyft.

103. As a proximate result of one or more of the foregoing negligent acts and/or omissions of Defendant, STERLING, Plaintiff was sexually assaulted, and suffered personal and pecuniary injuries.

WHEREFORE, Plaintiff, JANE DOE, demands judgment against Defendant, STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS, in an amount in excess of the minimum amount required for jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

TIMOTHY S. TOMASIK

Timothy S. Tomasik
Patrick J. Giese
Patrick M. Grim
TOMASIK KOTIN KASSERMAN, LLC
161 N. Clark Street
Suite 3050
Chicago, Illinois 60601

J. Timothy Eaton
Jonathan B. Amarilio
TAFT STETTINIUS & HOLLISTER LLP
111 E. Wacker Drive,
Suite 2800
Chicago, Illinois 60601

Of Counsel
James P. McKay

Case No. _____

In the
Appellate Court of Illinois
First Judicial District

JANE DOE,

Plaintiff-Movant,

v.

LYFT, INC., ANGELO MCCOY; and STERLING INFOSYSTEMS, INC. d/b/a STERLING TALENT SOLUTIONS,

Defendant-Respondent.

On Appeal from the Circuit Court of Cook County, Illinois
County Department, Law Division, Case No. 17 L 11355
Hon. Patricia O'Brien Sheahan, Judge Presiding

NOTICE OF FILING

TO: *See Certificate of Service*

PLEASE TAKE NOTICE THAT on the **1st day of July, 2019**, we caused to be filed (electronically submitted), with the Appellate Court of Illinois, First Judicial District, **Jane Doe's Application for Leave to Appeal Pursuant to Illinois Supreme Court Rule 308, the Supporting Record to the Application, and the Supreme Court Rule 328 Affidavit for the Supporting Record**, copies of which are hereby served upon you.

Dated: July 1, 2019

Respectfully submitted,

JANE DOE, *Plaintiff-Movant*,

By: *s/ Jonathan B. Amarilio*
One of Her Attorneys

J. Timothy Eaton
Jonathan B. Amarilio
Allison E. Czerniak
Ioana M. Guset
TAFT STETTINIUS & HOLLISTER LLP
111 E. Wacker Drive, Suite 2800
Chicago, Illinois 60601
Tel.: 312.527.4000
teaton@taftlaw.com
jamarilio@taftlaw.com
aczerniak@taftlaw.com
iguset@taftlaw.com

Timothy S. Tomasik
Patrick J. Giese
Patrick M. Grim
TOMASIK KOTIN KASSERMAN, LLC
161 N. Clark Street, Suite 3050 Chicago,
Illinois 60601
Tel.: 312.605.8800
tim@tkklaw.com

Attorneys for Plaintiff-Movant Jane Doe

25420400.1

CERTIFICATE OF SERVICE

The undersigned, pursuant to the provisions of 1-109 of the Illinois Code of Civil Procedure, and Ill. S. Ct. R. 12, hereby certifies and affirms that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be and that he caused the foregoing **Notice of Filing**and **, Jane Doe's Application for Leave to Appeal Pursuant to Illinois Supreme Court Rule 308, the Supporting Record to the Application, and the Supreme Court Rule 328 Affidavit for the Supporting Record,** to be sent to the parties listed below on this 1st day of July, 2019, by *electronic mail*and *electronically through the Odyssey Electronic Service*, from the offices of Taft Stettinius & Hollister LLP before the hour of 5:00 p.m.:

Timothy S. Tomasik
Patrick J. Giese
Tomasik Kotin Kasserman, LLC
161 North Clark Street, Suite 3050
Chicago, IL 60601
tim@tkklaw.com
pat@tkklaw.com
Attorneys for Plaintiff Doe

Anthony J. Carballo
Martin Syversten
FREEBORN & PETERS LLP
311 S. Wacker Drive, Suite 3000
Chicago, IL 60606
(312) 360-6000
tcarballo@freeborn.com
msyversten@freeborn.com
Attorneys for Defendant, Lyft, Inc.

Beth A. Stewart (*pro hac vice*)
Emily A. Rose (*pro hac vice*)
WILLIAMS & CONNOLLY LLP
725 Twelftfh Street, N.W.
Washington, DC 20005
(202) 434-5000
bstewart@wc.com
erose@wc.com
Attorney for Defendant Lyft, Inc.

Kathy Nielson – knielson@reedsmith.com
Michael O'Neil – Michael.oneil@reedsmith.com
Bruce R. Van Baren – bvanbaren@reedsmith.com
Jennifer Ikka - jil
Reed Smith LLP
10 S. Wacker Drive, 40th Floor
Chicago, Illinois 60606-7507

/s/ Jonathan B. Amarilio

25420400.1

2020 IL App (1st) 191328

No. 1-19-1328

Opinion filed September 30, 2020

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JANE DOE, Plaintiff-Appellant, v. LYFT, INC.; ANGELO McCOY; and STERLING INFOSYSTEMS, INC., d/b/a Sterling Talent Solutions, Defendants (Lyft, Inc., Defendant-Appellee).	)	Appeal from the Circuit Court of Cook County. No. 17 L 11355 Honorable Patricia O'Brien Sheahan, Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court, with opinion.
Justice Burke concurred in the judgment and opinion.
Presiding Justice Gordon concurred in part and dissented in part.

OPINION

¶ 1 This appeal presents two questions certified by the trial court under Illinois Supreme Court Rule 308 (eff. July 1, 2017) regarding the scope and constitutionality of section 25(e) of the Transportation Network Providers Act (or Act) (625 ILCS 57/25(e) (West 2018)), which declares that ridesharing companies like Uber and Lyft (called transportation network companies or TNCs under the statute) "are not common carriers, *** as defined by applicable State law." Under the

common law, a common carrier owes its passengers the highest duty of care and is subject to vicarious liability if its agent commits an intentional tort against a passenger, even if the agent's conduct falls outside the scope of the agency relationship. The questions we address here are (1) whether section 25(e) exempts ridesharing companies from the heightened duty of care and standard of vicarious liability that apply to common carriers and (2) if so, whether section 25(e) violates the Illinois Constitution's ban on special legislation (Ill. Const. 1970, art. IV, § 13) or whether the Act itself was passed in violation of the Illinois Constitution's three-readings rule (Ill. Const. 1970, art. IV, § 8(d)). For the following reasons, we answer the first question in the affirmative and the second question in the negative.

¶ 2 I. BACKGROUND

¶ 3 Lyft, Inc. (Lyft) is a ridesharing company that provides an alternative to traditional taxicab service. It operates an on-demand transportation network that uses a smartphone application (or "app") to connect individuals in search of rides with drivers willing to provide them using their personal vehicles. In July 2017, after an evening out with friends, plaintiff Jane Doe used the Lyft app on her smartphone to hail a ride home.[1] The app matched Doe with Angelo McCoy, a driver in the Lyft network. A short time later, McCoy arrived at Doe's location, and Doe got in the back seat of McCoy's vehicle. At some point during the ride, Doe fell asleep. McCoy then drove to a secluded alley, where he brandished a knife, zip-tied Doe's hands, and repeatedly sexually assaulted her. After the attack, McCoy drove away with Doe still in the back seat of his vehicle. Doe eventually escaped when McCoy stopped briefly for a traffic light.

[1]Because Doe's claims were dismissed on the pleadings, we accept all well-pleaded allegations in her complaint as true for purposes of this appeal. *Doe v. Coe*, 2019 IL 123521, ¶ 20.

¶ 4 Doe sued McCoy, Lyft, and Sterling Infosystems, Inc. (Sterling), the company Lyft uses to conduct background checks of its drivers. Doe's complaint included claims of assault and battery and false imprisonment against McCoy and a claim of negligence against Sterling. As to Lyft, Doe alleged that it was directly liable for negligently hiring, retaining, and supervising McCoy and for fraudulently representing itself as a safe transportation option. (Those claims are not at issue in this appeal.) Doe also alleged that, as McCoy's principal or employer, Lyft was vicariously liable for his intentional torts against her.

¶ 5 Lyft moved to dismiss the vicarious liability claims as legally insufficient under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2018)). It acknowledged that a principal or employer may be held vicariously liable for its agent's or employee's conduct if the conduct fell within the scope of the agency or employment relationship.[2] See *Wilson v. Edward Hospital*, 2012 IL 112898, ¶ 18. But Lyft argued that it cannot be held vicariously liable for McCoy's attack on Doe because acts of sexual assault, as a matter of law, fall outside the scope of an agency or employment relationship. See *Doe v. Lawrence Hall Youth Services*, 2012 IL App (1st) 103758, ¶ 30.

¶ 6 In response, Doe argued that Lyft can be held vicariously liable for its agent's or employee's intentional tort against a passenger, even if the relevant conduct fell outside the scope of the agency or employment relationship, because Lyft is a common carrier that owes its passengers a heightened and nondelegable duty of care. See *Dennis v. Pace Suburban Bus Service*, 2014 IL App (1st) 132397, ¶¶ 13-16. Doe argued that, like a traditional taxicab company, Lyft is

[2]In its motion to dismiss, Lyft assumed that McCoy was its agent or employee but reserved the right to contest the issue later. For purposes of this appeal, we likewise assume that McCoy was an agent or employee of Lyft.

a common carrier because it provides transportation services to the general public. See *Browne v. SCR Medical Transportation Services, Inc.*, 356 Ill. App. 3d 642, 646 (2005) ("A common carrier is one who undertakes for hire to carry all persons indifferently who may apply for passage, so long as there is room and there is no legal excuse for refusal." (Internal quotation marks omitted.)); *Anderson v. Yellow Cab Co.*, 28 Ill. App. 3d 656, 657 (1975) ("A taxicab is a common carrier.").

¶ 7 Even if Lyft is not a common carrier, Doe argued, it should nonetheless be held to the same standard of care as a common carrier. Doe noted that the heightened duty of care and principles of vicarious liability applicable to common carriers have been extended to non-common carrier school bus operators on the ground that they perform the same basic function and exercise the same control over their passengers' safety as common carriers. See *Green v. Carlinville Community Unit School District No. 1*, 381 Ill. App. 3d 207, 214 (2008); *Doe v. Sanchez*, 2016 IL App (2d) 150554, ¶¶ 27-35. The same considerations, Doe argued, support the extension of common carrier liability to ridesharing companies, such as Lyft, even if they are not otherwise deemed common carriers.

¶ 8 In reply, Lyft invoked section 25(e) of the Transportation Network Providers Act, which declares that transportation network companies (or TNCs) and their drivers "are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle service." 625 ILCS 57/25(e) (West 2018). (Doe does not dispute that Lyft is a TNC, which is defined as "an entity *** that uses a digital network or software application service to connect passengers to transportation network company services provided by transportation network company drivers." *Id.* § 5.) In light of section 25(e), Lyft argued, it is not a common carrier as a matter of law and thus not subject to the standards of liability applicable to

common carriers, including vicarious liability for the torts of its agents, such as sexual assault, that fall outside the scope of the agency relationship.

¶ 9 Lyft argued that section 25(e) would be rendered meaningless if ridesharing companies could be treated as though they were common carriers for liability purposes despite that section's declaration that they are not common carriers. Regardless, Lyft argued, the decisions in *Green* and *Sanchez* extending common carrier standards of liability to non-common carrier school bus operators rest on the unique safety concerns presented by the transportation of school children and do not support the extension of common carrier liability to other non-common carriers.

¶ 10 In a surreply, Doe argued that section 25(e) is unconstitutional for two reasons. First, she argued that section 25(e) violates the Illinois Constitution's ban on special legislation because it arbitrarily treats ridesharing companies more favorably than similarly situated entities such as taxicab companies. Second, Doe argued that in passing the Transportation Network Providers Act, including section 25(e), the General Assembly did not adhere to the Illinois Constitution's three-readings rule, which mandates that "[a] bill shall be read by title on three different days in each house" before passage. Ill. Const. 1970, art. IV, § 8(d).

¶ 11 After hearing oral argument, the circuit court issued a written opinion dismissing Doe's vicarious liability claims without prejudice. The court recognized that a common carrier may be held vicariously liable for an intentional tort committed by its agent against a passenger even if the agent's conduct fell outside the scope of the agency relationship. And the court noted that, absent section 25(e), ridesharing companies would likely be deemed common carriers. But the court concluded that section 25(e) plainly exempts ridesharing companies from common carrier status, meaning that Lyft may not be deemed a common carrier as a matter of law. And treating Lyft as

though it were a common carrier, the court explained, would undermine the legislative intent of section 25(e).

¶ 12 The circuit court next addressed Doe's constitutional challenges. In rejecting her special legislation challenge, the court held that section 25(e) does not arbitrarily discriminate between ridesharing companies and their competitors. Although the court recognized that one purpose of the Transportation Network Providers Act is to ensure the safety of ridesharing passengers, the court found that section 25(e)'s exemption of ridesharing companies from common carrier status is rationally related to the Act's additional goal of "promot[ing] and enabl[ing] the growth of TNCs in the state of Illinois." Quoting *Illinois Transportation Trade Ass'n v. City of Chicago*, 839 F.3d 594, 599 (7th Cir. 2016), the court explained that it is "permissible for a government to choose 'the side of deregulation, and thus of competition[,]' when it decides how to regulate various entities and activities." The court also rejected Doe's challenge under the three-readings rule, finding that the manner in which the Act was passed was "uncommon" but not "disallowed."

¶ 13 In light of its determination that section 25(e) is a valid exercise of legislative authority, the court held that Doe was barred from recovering against Lyft under a common carrier theory of vicarious liability. However, while the court had earlier stated that it would be inconsistent with the intent of section 25(e) to treat ridesharing companies as though they were common carriers, the court left open the possibility that a different theory of vicarious liability premised on the extension of common carrier standards of liability to non-common carriers, as in *Green* and *Sanchez*, may be valid. The court accordingly dismissed Doe's vicarious liability claims without prejudice.

¶ 14 The court then certified two questions of law for immediate appeal under Rule 308:[3] (1) whether section 25(e) of the Transportation Network Providers Act "preclude[s] TNCs, such as Lyft, from otherwise being subject to the highest duty of care under common law, like that of a common carrier's elevated duty to its passengers," and (2) if so, whether the Act is constitutional. We allowed Doe's timely application for leave to appeal.

¶ 15 II. ANALYSIS

¶ 16 Because an appeal under Rule 308 is limited to questions of law, our standard of review is necessarily *de novo*. *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 21. In particular, we review questions involving the scope and interpretation of a statute and its constitutionality *de novo*. See *Raab v. Frank*, 2019 IL 124641, ¶ 18 (questions of statutory construction); *People v. Swenson*, 2020 IL 124688, ¶ 19 (constitutional questions). We also review a circuit court's order granting a section 2-615 motion to dismiss *de novo*. *Doe v. Coe*, 2019 IL 123521, ¶ 20.

¶ 17 A. Section 25(e) Exempts TNCs From Common Carrier Standards of Liability

¶ 18 Section 25(e) of the Transportation Network Providers Act declares that TNCs "are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle service." 625 ILCS 57/25(e) (West 2018). The first certified question asks whether this provision precludes TNCs from being subject to the same

[3]Rule 308 provides: "When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. *** The Appellate Court may thereupon in its discretion allow an appeal from the order." Ill. S. Ct. R. 308(a) (eff. July 1, 2017).

heightened duty of care and principles of vicarious liability applicable to common carriers. We hold that it does.[4]

¶ 19 Under the doctrine of *respondeat superior*, a principal or employer is generally subject to vicarious liability for the tortious conduct of its agent or employee only if the conduct "fell within the scope of the agency or employment." *Wilson*, 2012 IL 112898, ¶ 18. An agent or employee's conduct "is not within the scope of [the agency or] employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the [principal or employer]." (Internal quotation marks omitted.) *Pyne v. Witmer*, 129 Ill. 2d 351, 360 (1989). Applying this standard, we have held that an act of sexual assault, "by its very nature, precludes the conclusion that it was committed within the scope of employment." *Lawrence Hall Youth Services*, 2012 IL App (1st) 103758, ¶ 28; see also *Stern v. Ritz Carlton Chicago*, 299 Ill. App. 3d 674, 677-81 (1998); *Deloney v. Board of Education of Thornton Township*, 281 Ill. App. 3d 775, 784-88 (1996). Doe does not dispute (at least for purposes of this appeal) that McCoy's alleged conduct fell outside the scope of his agency or employment with Lyft.

¶ 20 As Doe notes, however, the presence of one of several special relationships—that of common carrier and passenger, innkeeper and guest, custodian and ward, and business invitor and invitee—gives rise to a heightened duty of care that includes an affirmative duty to aid or protect

[4]The Transportation Network Providers Act was repealed by its own terms on June 1, 2020. See 625 ILCS 57/34 (West 2018). The General Assembly purported to revive the Act on June 12, 2020, by amending the repeal date to June 1, 2021. See Public Act 101-639, § 40 (eff. June 12, 2020) (amending 625 ILCS 57/34). It is unclear whether this action was effective in reviving the statute. See 5 ILCS 70/3 (West 2018) ("No act or part of an act repealed by the General Assembly shall be deemed to be revived by the repeal of the repealing act."). But we need not resolve that issue here. Even if the Act is no longer in effect, its repeal does not retroactively alter the parties' rights or render this appeal moot. See *Perry v. Department of Financial & Professional Regulation*, 2018 IL 122349, ¶ 43 ("if a statutory change is substantive, then the change is not to be applied retroactively").

against an unreasonable risk of physical harm from third parties, including one's agents or employees. See *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 20; *Gress v. Lakhani Hospitality, Inc.*, 2018 IL App (1st) 170380, ¶ 15. As relevant here, "the high duty of care a common carrier owes its passengers is premised on the carrier's unique control over its passengers' safety." *Sanchez*, 2016 IL App (2d) 150554, ¶ 39. Because this heightened duty of care is nondelegable, a common carrier may be held vicariously liable for its agent's intentional tort against a passenger even if the agent's conduct, such as sexual assault, falls outside the scope of the agency or employment relationship. *Id.* ¶ 52; *Dennis*, 2014 IL App (1st) 132397, ¶¶ 13-16; *Green*, 381 Ill. App. 3d at 212-13.

¶ 21 We may assume (without deciding) that, in the absence of section 25(e), Lyft and other TNCs, like traditional taxicabs, would be deemed common carriers. See *Anderson*, 28 Ill. App. 3d at 657 (recognizing taxicab as common carrier). "A common carrier is one who undertakes for hire to carry all persons indifferently who may apply for passage, so long as there is room and there is no legal excuse for refusal." (Internal quotation marks omitted.) *Browne*, 356 Ill. App. 3d at 646. "The definitive test to be employed to determine if a carrier is a common carrier is whether the carrier serves all of the public alike." *Doe v. Rockdale School District No. 84*, 287 Ill. App. 3d 791, 794 (1997). Doe's complaint alleges that Lyft markets itself as a transportation company providing rides to the general public, that it offers its services to the general public through a freely available smartphone app, and that it charges its passengers standardized fares. Doe further alleges that Lyft prohibits its drivers from refusing to provide service based on race, national origin, religion, sexual orientation, gender or gender identity, physical or mental disability, medical condition, marital

status, or age.[5] Accepting these well-pleaded allegations as true, we cannot say that Lyft and other TNCs would not be deemed common carriers under the traditional definition of that term.

¶ 22 The problem for Doe, of course, is that section 25(e) declares that TNCs are *not* common carriers. Doe does not contest that Lyft is a TNC, and it clearly is. See 625 ILCS 57/5 (West 2018) (defining a TNC as "an entity *** that uses a digital network or software application service to connect passengers to transportation network company services provided by transportation network company drivers"). Doe argues, however, that Lyft should be held to the same heightened and nondelegable duty of care to its passengers that would apply if it were a common carrier, section 25(e) notwithstanding. Doe's argument rests primarily on the decisions in *Green* and *Sanchez*, which extended principles of common carrier liability, including vicarious liability for a driver's sexual assault of a passenger, to non-common carrier school bus operators. Doe reads those decisions as standing for the proposition that any provider of transportation services that exercises a high degree of control over its passengers' safety must be held to the same duty of care that applies to common carriers. We do not read either decision so broadly.

¶ 23 *Green* held that, although a school district that operates buses to transport its students is not a common carrier, it owes the students it transports the same duty of care that a common carrier owes its passengers. 381 Ill. App. 3d at 213. The court reasoned that, when busing students, a school district "is performing the same basic function [as a common carrier], transporting individuals." *Id.* And "[l]ike a passenger on a common carrier," the court explained, "a student on

[5]Indeed, the Transportation Network Providers Act requires all TNCs to "adopt and notify [their] drivers of a policy of non-discrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity with respect to passengers and potential passengers." 625 ILCS 57/20(a) (West 2018).

a school bus cannot ensure his or her own personal safety but must rely on the school district to provide fit employees to do so." *Id.*

¶ 24 *Sanchez* similarly held that a private school bus operator "owes the students it transports the same duty of care imposed on a common carrier." 2016 IL App (2d) 150554, ¶ 27. There, the court noted that "the high duty of care a common carrier owes its passengers is premised on the carrier's unique control over its passengers' safety." *Id.* ¶ 39. It is thus appropriate to hold a private school bus operator to a common carrier's duty of care, the court explained, because "a school bus driver is in unique control over the safety of students because he or she is often the only adult present during the commute." *Id.*

¶ 25 Doe contends that it is equally appropriate to hold Lyft and other TNCs to a common carrier's duty of care because TNCs also perform the same basic function as a common carrier and exercise significant control over the safety of their passengers. But we cannot ignore the context in which *Green* and *Sanchez* arose, namely, the transportation of school children. In *Green*, the court emphasized that its holding was "limited to the common-law duty school districts owe student passengers while the students are being transported on a school bus." 381 Ill. App. 3d at 214. The court stressed that because "children on a school bus" are "the most vulnerable members of our society," it would be "ludicrous" to afford them less protection than "adults on public transportation buses." *Id.* at 213. Indeed, *Sanchez* recognized that "*Green*'s core rationale [was] that school children require the highest standard of care in their transport." *Sanchez*, 2016 IL App (2d) 150554, ¶ 30. And *Sanchez* itself relied on the same rationale, invoking "the strong public policy to ensure the safe transportation of students" (*id.* ¶ 27) and "the importance [that] Illinois rightly places on the safety of school children" (*id.* ¶ 39). Read in this context, we do not think

Green and *Sanchez* support the broad proposition that any non-common carrier that performs the same basic function as a common carrier and exercises a similar degree of control over its passengers' safety must be held to the same duty of care that applies to common carriers.

¶ 26 Doe suggests that "in addition to the four [special relationships] that have been recognized, there may be other special relationships that give rise to a [heightened] duty." *Stearns v. Ridge Ambulance Service, Inc.*, 2015 IL App (2d) 140908, ¶ 18; see also Restatement (Second) of Torts § 314A cmt. b (1965) (four recognized relationships "are not intended to be exclusive, and are not necessarily the only ones in which a duty of affirmative action for the aid or protection of another may be found"). But Doe cites no Illinois decision recognizing an additional special relationship. The only example the Restatement provides is "that of husband and wife," and it ultimately "expresses no opinion as to whether there may not be other relations which impose a similar duty." Restatement (Second) of Torts § 314A cmt. b & caveat (1965). In any event, Doe's reply brief makes clear that she is not asking us to recognize a new special relationship between ridesharing companies and their passengers. Instead, she seeks to extend the common carrier's duty of care to non-common carrier ridesharing companies under the reasoning of *Green* and *Sanchez*. As explained above, however, we do not think *Green* or *Sanchez* support her argument.

¶ 27 Even if there were support for the general proposition that common carrier liability may be extended to non-common carriers other than school bus operators, it would be inappropriate for us to extend such liability to transportation providers that the legislature has specifically declared are not common carriers, as the General Assembly did with respect to TNCs in section 25(e) of the Transportation Network Providers Act. "The fundamental rule of statutory interpretation is to ascertain and give effect to the legislature's intent, and the best indicator of that intent is the

statutory language, given its plain and ordinary meaning." *Dew-Becker v. Wu*, 2020 IL 124472, ¶ 12. Section 25(e) states that TNCs "are not common carriers, *** as defined by applicable State law." 625 ILCS 57/25(e) (West 2018). Doe, in essence, would have us read section 25(e) as saying that TNCs are not common carriers *but are subject to the same duty of care applicable to common carriers*. But courts "are not free to read into a statute exceptions, limitations, or conditions the legislature did not express." *Dew-Becker*, 2020 IL 124472, ¶ 14. "No rule of construction authorizes this court to declare that the legislature did not mean what the plain language of the statute imports, nor may we rewrite a statute to add provisions or limitations the legislature did not include." *People v. Smith*, 2016 IL 119659, ¶ 28.

¶ 28 Were we to hold that TNCs are subject to the same liability standards as common carriers, it would strip the relevant language of section 25(e) of all meaning, contravening another rule of statutory construction that statutes "should be interpreted so that no part is rendered meaningless or superfluous." *People v. Simpson*, 2015 IL 116512, ¶ 29. If TNCs may be held to the same standards of liability as common carriers due to their similarity to common carriers, what does the legislative declaration that TNCs "are not common carriers" accomplish? The only suggestion Doe offers is that it frees TNCs from the common carrier's duty to serve the public indiscriminately. See *Rockdale School District*, 287 Ill. App. 3d at 794 ("A common carrier undertakes for hire to carry all persons indifferently, who may apply for passage so long as there is room and there is no legal excuse for refusal.").

¶ 29 But a separate section of the Transportation Network Providers Act requires TNCs to "adopt and notify [their] drivers of a policy of non-discrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or

gender identity with respect to passengers and potential passengers." 625 ILCS 57/20(a) (West 2018). The Act also requires TNC drivers to "comply with all applicable laws relating to accommodation of service animals" (*id.* § 20(c)) and forbids TNCs from "impos[ing] additional charges for providing services to persons with physical disabilities because of those disabilities" (*id.* § 20(d)). In addition, the Act provides that "[i]f a unit of local government has requirements for licensed chauffeurs not to discriminate in providing service in under-served areas, TNC drivers participating in TNC services within that unit of local government shall be subject to the same non-discrimination requirements for providing service in under-served areas." *Id.* § 20(f).

¶ 30 Construing section 25(e) in conjunction with these additional provisions, as we must (see *People v. Jackson*, 2011 IL 110615, ¶ 12 ("A court must view [a] statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation."), we think the Act does the opposite of what Doe suggests: it exempts TNCs from common carrier standards of liability but requires them to adhere to the common carrier's duty to serve all members of the public alike.

¶ 31 Finally, Doe correctly notes that "[c]ommon-law rights and remedies remain in full force in this state unless expressly repealed by the legislature or modified by court decision" and that "[a] legislative intent to alter or abrogate the common law must be plainly and clearly stated." *McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶ 30. She contends that section 25(e) does not clearly and expressly abrogate the common law rule that non-common carriers with sufficient similarities to common carriers are subject to the same standards of liability as common carriers. But as we explained above, there is no such general common law rule. By declaring that

TNCs are not common carriers, section 25(e) clearly and expressly exempts TNCs from the standards of liability that apply to common carriers under the common law.

¶ 32 B. Section 25(e) Does Not Violate the Special Legislation Clause

¶ 33 We now turn to the second certified question: Is the Transportation Network Providers Act constitutional? Because all statutes are presumed constitutional, the party challenging a statute's validity bears the burden of establishing a clear constitutional infirmity. *McElwain v. Office of the Illinois Secretary of State*, 2015 IL 117170, ¶ 14. The presumption of constitutionality also means that we must affirm the constitutionality of a statute whenever it is reasonably possible to do so. *Id.*

¶ 34 Doe contends that section 25(e) of the Act, as interpreted above to exempt ridesharing companies from common carrier liability, violates our state constitution's special legislation clause. That provision states: "The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const. 1970, art. IV, § 13. "The special legislation clause prohibits the General Assembly from conferring a special benefit or privilege upon one person or group and excluding others that are similarly situated." *Crusius v. Illinois Gaming Board*, 216 Ill. 2d 315, 325 (2005). "While the legislature has broad discretion to make statutory classifications, the special legislation clause prevents it from making classifications that arbitrarily discriminate in favor of a select group." *Id.* A special legislation clause challenge is thus judged under a two-part test: we first assess whether the statutory classification at issue discriminates in favor of a select group, and if we find that it does, we then determine whether the classification is arbitrary. *Id.*

¶ 35 We need not dwell on the first aspect of this inquiry. There is no question (and Lyft does not argue otherwise) that section 25(e) discriminates in favor of ridesharing companies *vis-à-vis* traditional taxicabs by exempting the former from the common carrier status that applies to the latter.

¶ 36 The operative question, then, is whether that legislative classification is arbitrary. This aspect of a special legislation clause challenge is judged under the same standards that apply to equal protection clause challenges under the federal or state constitution. *Id.* Where, as here, the challenged statute does not involve a suspect classification or affect fundamental rights, we apply rational basis review. *Id.* Under that deferential review, we must uphold the constitutionality of a statute if the classification it draws is rationally related to a legitimate state interest. *Id.* Put differently, "we must determine whether the classifications created by [the statute] are based upon reasonable differences in kind or situation, and whether the basis for the classifications is sufficiently related to the evil to be obviated by the statute." *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 394 (1997). "In performing our analysis, we 'may hypothesize reasons for the legislation, even if the reasoning advanced did not motivate the legislative action.' " *Dotty's Cafe v. Illinois Gaming Board*, 2019 IL App (1st) 173207, ¶ 34 (quoting *People ex rel. Lumpkin v. Cassidy*, 184 Ill. 2d 117, 124 (1998)). Thus, if we "can reasonably conceive of any set of facts that justifies distinguishing the class the statute benefits from the class outside its scope, [we] will uphold the statute." *Crusius*, 216 Ill. 2d at 325.

¶ 37 Doe contends that there is no real and substantial difference between ridesharing companies and their traditional taxicab competitors that justifies treating only the latter as common carriers. In Doe's view, both are simply transportation companies in the business of selling rides

to the public. But we think the General Assembly could rationally find that the different business model and technology employed by the ridesharing industry in delivering its services warrants the differing regulatory treatment.

¶ 38 Unlike traditional taxicabs, TNCs "use part-time drivers extensively." *Illinois Transportation Trade Ass'n*, 839 F.3d at 598. As Doe alleges in her complaint, Lyft's "business model depends on having a large pool of non-professional drivers to transport the general public." This model allows TNCs to dramatically expand the availability of on-demand transportation services to the public, particularly in areas that are not well served by traditional taxicabs. It also creates a "business relationship between TN[C]s and their drivers [that] differ[s] substantially from the one between [taxicab] medallion holders and taxicab chauffeurs." *Checker Cab Operators, Inc. v. Miami-Dade County*, 899 F.3d 908, 923 (11th Cir. 2018). One significant difference is that, as a matter of law, TNCs are "not deemed to own, control, operate, or manage the vehicles used by TNC drivers." 625 ILCS 57/5 (West 2018).

¶ 39 The technological platform that TNCs use to deliver their services also distinguishes them from their traditional taxicab competitors. Unlike taxis, TNC drivers may not accept passengers via street hail. See *id.* ("TNC service is not *** street hail service."). Instead, TNC service must be "prearranged [by a passenger] with a TNC driver through the use of a TNC digital network or software application," namely, a smartphone app. *Id.* This system allows TNCs, in comparison to taxicabs, to provide passengers with "more information in advance about their prospective rides—information that includes not only the driver's name but also pictures of him (or her) and of the car." *Illinois Transportation Trade Ass'n*, 839 F.3d at 598; see 625 ILCS 57/30(c) (West 2018) ("The TNC's software application or website shall display a picture of the TNC driver, and the

license plate number of the motor vehicle utilized for providing the TNC service before the passenger enters the TNC driver's vehicle."). "In contrast, a customer who hails a taxi on the street may be able to observe the make and model of the vehicle, but does not know the driver's identity before he or she enters the vehicle." *Newark Cab Ass'n v. City of Newark*, 901 F.3d 146, 157 (3d Cir. 2018).

¶ 40 Doe contends that any distinction between TNCs and taxicabs based on the use of a smartphone app to prearrange rides is illusory because many taxicab companies have similar apps. But the critical distinction is that TNC service *must* be prearranged through a smartphone app. Unlike taxis, TNC drivers are prohibited from accepting passengers via street hail. Doe also asserts that the distinction between arranging a ride via street hail and doing so via smartphone app is of no practical import because taxicab passengers receive similar information about their driver upon entering the cab. See 625 ILCS 55/5(a) (West 2018) ("The taxi driver's picture, the taxi driver's license or registration number, and the taxicab medallion number or an exterior identification number must be posted in a visible location in each cab."). But we cannot overlook the significance of TNC passengers receiving relevant information *before* they enter the vehicle, even if that amounts to a relatively short period of time in practice. "These few minutes give the [TNC] customer time to consider the available information before entering a vehicle, which is time that a taxi customer might not have." *Newark Cab Ass'n*, 901 F.3d at 158.

¶ 41 We think the General Assembly could reasonably conclude that TNCs' business model and technological platforms justify exempting them, but not traditional taxicabs, from common carrier status. In light of TNCs' extensive reliance on large networks of non-professional, part-time drivers, the General Assembly could reasonably conclude that holding those companies to

principles of common carrier liability—including vicarious liability for intentional torts its drivers commit against passengers even if the drivers' conduct was outside the scope of their agency or employment—would be prohibitively burdensome for the industry. At the same time, the General Assembly could reasonably determine that the unique safety features enabled by TNCs' software technology and method of service make the imposition of such liability unnecessary for the protection of passengers.

¶ 42 Doe contends that section 25(e) is not rationally related to ensuring passenger safety, which she considers to have been the sole legislative purpose of the Transportation Network Providers Act. She asserts that section 25(e) is at odds with the remaining provisions of the Act, which promote the goal of passenger safety by (among other things) requiring TNCs and TNC drivers to maintain certain levels of automobile liability insurance coverage (625 ILCS 57/10 (West 2018)), setting minimal driver qualification requirements and mandating that drivers undergo criminal background checks (*id.* § 15), and requiring TNCs to implement zero-tolerance policies concerning the use of drugs or alcohol by drivers while logged in to the TNC network or providing TNC service (*id.* § 25(a)).

¶ 43 But a law need not be confined to a single purpose. "Legislation often has multiple purposes whose furtherance involves balancing and compromise by the legislature." *Crusius*, 216 Ill. 2d at 329. The Transportation Network Providers Act, "like most laws, might predominantly serve one general objective, *** while containing subsidiary provisions that seek to achieve other desirable (perhaps even contrary) ends as well, thereby producing a law that balances objectives but still serves the general objective when seen as a whole." *Fitzgerald v. Racing Ass'n of Central Iowa*, 539 U.S. 103, 108 (2003). We think that is precisely what the Transportation Network Providers

Act did: it balanced the competing aims of ensuring the safety of TNC passengers and creating a regulatory environment that would allow the then-nascent ridesharing industry to flourish in Illinois, bringing added competition and innovation to the transportation services market. Section 25(e) will thus survive rational basis review so long as it rationally furthers at least one of these goals. See *Crusius*, 216 Ill. 2d at 329 ("For a provision in a law to pass the rational basis test, it does not have to promote all of the law's disparate and potentially conflicting objectives.").[6]

¶ 44 The parties devote considerable attention to debating whether we may consider the legislative history of an earlier bill to regulate the ridesharing industry that the General Assembly passed (but the Governor vetoed) when determining the legislative purpose of the Transportation Network Providers Act. We need not resolve that question here, as its answer would be of academic interest only. When reviewing a statute under the rational basis test, a "court may hypothesize reasons for the legislation, even if the reasoning advanced did not motivate the legislative action." *Lumpkin*, 184 Ill. 2d at 124; see also *Federal Communications Comm'n v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993) (stating, in context of federal equal protection clause challenge, that "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature"). We may uphold section 25(e) if it is rationally related to the purpose of encouraging the growth of the ridesharing industry in order to foster

[6]Doe questions whether the now well-established ridesharing industry continues to need the particular regulatory rules established in the Transportation Network Providers Act. But under the rational basis test, we must judge the constitutionality of a statutory classification in light of the facts existing at the time of the statute's enactment. See *Chicago National League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 368-69 (1985) ("When a classification under a statute is called into question, if any state of facts can reasonably be conceived to sustain the classification, the existence of that state of facts at the time the statute was enacted must be assumed.").

competition in the transportation services market regardless of whether any legislator openly expressed that purpose at a committee hearing or in floor debate.

¶ 45 Recognizing the dual goals of the Transportation Network Providers Act, we have little difficulty in concluding that section 25(e)'s exemption of TNCs from common carrier status is rationally related to a legitimate state interest. Fostering competition in the transportation services market and increasing transportation options for consumers is undoubtedly a legitimate state interest. See *Moline School District No. 40 Board of Education v. Quinn*, 2016 IL 119704, ¶ 27 ("Encouraging Illinois businesses to expand in Illinois and facilitating economic growth of our communities are unquestionably legitimate functions of state government."). And the General Assembly could reasonably conclude that exempting TNCs from common carrier liability would facilitate their growth in the State. As explained above, the General Assembly could rationally conclude that holding TNCs to the common carrier standard of vicarious liability for their drivers' intentional torts against passengers, even if the driver's conduct fell outside the scope of the agency relationship, would unduly burden an emerging industry that relies to a large extent on non-professional and part-time drivers to increase the supply of on-demand transportation services available to the public. And as further explained, the General Assembly could rationally conclude that the safety features inherent in the technology that TNCs use to deliver their services provide additional protection for passenger safety and thus lessen the need to impose on TNCs the same degree of vicarious liability applicable to common carriers such as taxicabs. In our dissenting colleague's view, "the fact that the drivers are not professionals and are driving passengers part-time in their own vehicles would suggest that TNCs should be required to assume even *more* responsibility for them, not less, to ensure passenger safety in the hands of such drivers."

(Emphasis in original.) *Infra* ¶ 69. But it is not for us to say whether section 25(e) is good policy or whether the Transportation Network Providers Act strikes the right balance between its competing goals of increased competition and passenger safety. "Our task is not to determine whether the statutory [provisions] are wise; our task is to determine whether they are constitutional." *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12, 28 (2003).

¶ 46 In rejecting an equal protection clause challenge to a Chicago ordinance regulating TNCs and taxicabs differently—on matters of driver and vehicle qualifications, licensing, fares, and insurance—the Seventh Circuit concluded that "[t]here are enough differences between taxi service and TN[C] service to justify different regulatory schemes." *Illinois Transportation Trade Ass'n*, 839 F.3d at 598. Other federal courts have followed suit in rejecting equal protection challenges to similar ordinances. See *Newark Cab Ass'n*, 901 F.3d at 156-160; *Checker Cab Operators*, 899 F.3d at 921-24; *Progressive Credit Union v. City of New York*, 889 F.3d 40, 48-51 (2d Cir. 2018). Although these decisions do not address laws holding TNCs to a different standard of vicarious liability than taxicabs, their reasoning is equally applicable here. As the Seventh Circuit explained, "[d]ifferent products or services do not as a matter of constitutional law, and indeed of common sense, always require identical regulatory rules." *Illinois Transportation Trade Ass'n*, 839 F.3d at 598. For the reasons discussed above, we think the General Assembly could reasonably conclude that the differences between TNCs and taxicabs justify treating the two entities differently for purposes of imposing vicarious liability for the actions of their drivers and that the classification drawn by section 25(e) is rationally related to a legitimate state interest.

¶ 47 Finally, Doe argues that by exempting ridesharing companies but not traditional taxicab operators from common carrier status, section 25(e) arbitrarily distinguishes between victims of

sexual assault by ridesharing drivers (who may not hold the driver's principal vicariously liable for the attack) and victims of sexual assault by taxicab drivers (who may). She asserts that this consequence of section 25(e) renders it unconstitutional under the special legislation clause. See *Best*, 179 Ill. 2d at 394 ("[I]n evaluating a challenged provision [under the special legislation clause] the court must consider the natural and reasonable effect of the legislation on the rights affected by the provision.").

¶ 48 In support of this argument, Doe compares section 25(e) to a statutory provision that our supreme court struck down in *Grasse v. Dealer's Transport Co.*, 412 Ill. 179 (1952). The provision at issue there transferred an injured employee's right to recover damages from his tortfeasor to the injured employee's employer if both the employer and the tortfeasor were covered by the Worker's Compensation Act. See *id.* at 181-82. As the court explained, the provision thus "modifie[d], and even eliminate[d] under some circumstances, the tort liability of third parties who negligently injure employees engaged in another enterprise." *Id.* at 191. The court held that the provision was unconstitutional special legislation in part because there was "no rational difference between an employee injured in the course of his employment by a [tortfeasor covered by the Act], and one injured by a [tortfeasor not covered by the Act]." *Id.* at 196. Rather, "[t]he sole basis for differentiation, as far as the injured employee [was] concerned[,] [was] a fortuitous circumstance—whether the third party tort-feasor happen[ed] to be [covered] under the [A]ct." *Id.*

¶ 49 The classification drawn by section 25(e) is not comparable to the one invalidated in *Grasse*. Whether a passenger is injured or attacked by a ridesharing driver rather than a taxicab driver does not result from happenstance but from the passenger's voluntary decision to use a ridesharing service rather than a taxi service. As our supreme court has explained, "relevant

differences in the circumstances under which *** various voluntary relationships [are] created" may "justif[y] the imposition of differing standards of care." *Grace v. Howlett*, 51 Ill. 2d 478, 488 (1972).

¶ 50 Contrary to the position of our dissenting colleague (see *infra* ¶ 67), we think the General Assembly could rationally conclude that differences in the manner in which TNCs and taxicabs form relationships with prospective passengers justify holding the respective entities to differing standards of care to their passengers. As discussed above, while a taxicab may respond to a prospective passenger's request for service via street hail, TNC service may only be prearranged between a passenger and driver using a TNC's smartphone app. See 625 ILCS 57/5 (West 2018). That technological innovation allows (and the Transportation Network Providers Act requires) TNCs to provide a prospective passenger with "a picture of the TNC driver[ ] and the license plate number of the motor vehicle utilized for providing the TNC service before the passenger enters the TNC driver's vehicle." *Id.* § 30(c). Thus, while a passenger who hails a taxi on the street "immediately is matched with a taxi when that taxi pulls over," a TNC passenger "is matched with [and provided information about] a driver a few minutes before the vehicle arrives," giving the TNC passenger "time to consider the available information before entering a vehicle." *Newark Cab Ass'n*, 901 F.3d at 158. As explained above, we think the General Assembly could rationally conclude that these features of TNC service (but not generally of taxicab service) create added protection for the safety of TNC passengers that justifies holding TNCs and taxicab operators to

differing standards of care and, in particular, to differing degrees of vicarious liability for the intentional torts of their drivers against passengers.[7]

¶ 51 C. The Enrolled-Bill Doctrine Forecloses Doe's Three-Readings Rule Challenge

¶ 52 Doe's final contention is that the entire Transportation Network Providers Act is invalid under the Illinois Constitution's three-readings rule, which requires that "[a] bill shall be read by title on three different days in each house" before passage. Ill. Const. 1970, art. IV, § 8(d). As Doe explains, the Transportation Network Providers Act originated as House Amendment No. 1 to Senate Bill 2774 (SB 2774). See 98th Ill. Gen. Assem., Senate Bill 2774, 2013 Sess. SB 2774 initially passed the Senate and was read twice in the House as an unrelated bill to amend the Illinois Public Accounting Act (see 225 ILCS 450/0.01 *et seq.* (West 2018)). After its second reading in the House, SB 2774 was amended by removing everything after the enacting clause and substituting the text of what eventually became the Transportation Network Providers Act. The newly reconstituted SB 2774 was read once more before being passed by the House and then returned to the Senate where it was debated and passed the same day.

¶ 53 Doe argues that the House improperly circumvented the three-readings rule by replacing the entirety of the then-twice read SB 2774 with a wholly unrelated amendment and reading the reconstituted bill just once before passage. In *Giebelhausen v. Daley*, 407 Ill. 25, 48 (1950), our supreme court held that the "complete substitution of a new bill under the original number, dealing

[7]Although section 25(e) exempts Lyft and other ridesharing companies from vicarious liability for their drivers' intentional torts that (like sexual assault) fall outside the scope of any agency relationship between the ridesharing company and its drivers, it does not similarly preclude Doe (and other ridesharing passengers) from recovering against a ridesharing company under theories of direct liability. In this case, Doe has also pleaded causes of action against Lyft for negligently hiring, retaining, and supervising McCoy and for fraudulently marketing itself as a safe transportation option. Those counts remain pending in the circuit court, and we express no opinion as to their merits.

with a subject which was not akin or closely allied to the original bill, and which was not read three times in each House, after it has been so altered, [was a] clear violation of" a similar three-readings rule in the 1870 Constitution. See Ill. Const. 1870, art. IV, § 13 ("Every bill shall be read at large on three different days, in each house ***.").

¶ 54 Doe contends that the procedure employed by the legislature here likewise violated the three-readings rule of our current constitution. But our supreme court has held that judicial challenges to legislation under the 1970 Constitution's three-readings rule are foreclosed by the enrolled-bill doctrine. See *Geja's Cafe v. Metropolitan Pier & Exposition Authority*, 153 Ill. 2d 239, 258-60 (1992). "That doctrine flows out of the language in article IV, section 8(d), which says '[t]he Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met.' " *Id.* at 258-59 (quoting Ill. Const. 1970, art. IV, § 8(d)). Under the enrolled-bill doctrine, "once the Speaker of the House of Representatives and the President of the Senate certify that the procedural requirements for passing a bill have been met, a bill is conclusively presumed to have met all procedural requirements for passage." *Friends of the Parks v. Chicago Park District*, 203 Ill. 2d 312, 328-29 (2003). The doctrine thus "precludes [courts] from inquiring into the legislature's compliance with the procedural requirements for passage of bills." *People v. Dunigan*, 165 Ill. 2d 235, 253 (1995).

¶ 55 Doe recognizes that we are bound to reject her three-readings rule challenge under the enrolled-bill doctrine. But she argues that it is time to abandon the doctrine and presents the issue to preserve it for further review by the supreme court. As Doe notes, the supreme court has lamented the General Assembly's "remarkably poor self-discipline in policing itself in regard to

the three-readings requirement" (*Friends of the Parks*, 203 Ill. 2d at 329) and has "reserve[d] the right to revisit" the enrolled-bill doctrine if the legislature's noncompliance persists (*Geja's Cafe*, 153 Ill. 2d at 260). Whether that time has come is a question only the supreme court can answer. Doe has appropriately preserved the issue for that court's review. But until the supreme court instructs otherwise, we must reject her three-readings rule challenge.

¶ 56 III. CONCLUSION

¶ 57 For the reasons discussed, we answer the circuit court's certified questions as follows: (1) section 25(e) of the Transportation Network Providers Act precludes TNCs from being subject to the heightened duty of care and special standards of vicarious liability that apply to common carriers and (2) neither the Act as a whole nor section 25(e), as interpreted, is unconstitutional. Accordingly, we affirm the circuit court's order dismissing Doe's vicarious liability claims and remand for further proceedings consistent with this opinion.

¶ 58 Affirmed and remanded; certified questions answered.

¶ 59 PRESIDING JUSTICE GORDON, concurring in part and dissenting in part:

¶ 60 I agree with the majority's answer to the first certified question, concerning whether section 25(e) of the Transportation Network Providers Act (Act) (625 ILCS 57/25(e) (West 2018)) exempts ridesharing companies from the heightened duty of care and standard of vicarious liability that apply to common carriers. However, I cannot agree with the majority's conclusion that section 25(e) is constitutional, and consequently, I respectfully dissent from the majority's answer to the second certified question.

¶ 61 Under our state's constitution, "[t]he General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made

applicable shall be a matter for judicial determination." Ill. Const. 1970, art. IV, § 13. This provision is commonly known as the special legislation clause, and it prohibits the legislature from conferring a special benefit or privilege upon one person or group and excluding others that are similarly situated. *Moline School District No. 40 Board of Education v. Quinn*, 2016 IL 119704, ¶ 18. "Its purpose, as [the supreme court has] consistently held, is to prevent arbitrary legislative classifications that discriminate in favor of a select group without a sound, reasonable basis." *Moline School District No. 40*, 2016 IL 119704, ¶ 18 (citing *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 391 (1997)).

¶ 62 In assessing whether a statute violates the special legislation clause, courts apply a two-part analysis: "First, they must determine whether the statutory classification at issue discriminates in favor of a select group. If it does, then they must go on to consider whether the classification is arbitrary." *Moline School District No. 40*, 2016 IL 119704, ¶ 23 (citing *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill. 2d 221, 235 (2005)). As the majority notes, there is no dispute that section 25(e) discriminates in favor of ridesharing companies by exempting them from common-carrier liability. Accordingly, the only question is whether the classification is arbitrary. It is here that the majority and I part ways.

¶ 63 A special legislation challenge is generally judged under the same standards applicable to an equal protection challenge. *Moline School District No. 40,* 2016 IL 119704, ¶ 24. If a law does not affect fundamental rights or make a suspect classification, "the appropriate measure of its constitutionality is the rational basis test, which asks whether the statutory classification is rationally related to a legitimate state interest." *Moline School District No. 40*, 2016 IL 119704, ¶ 24 (citing *Crusius v. Illinois Gaming Board*, 216 Ill. 2d 315, 325 (2005)). In applying such a test,

"we must determine whether the classifications created by [the statute] are based upon reasonable differences in kind or situation, and whether the basis for the classifications is sufficiently related to the evil to be obviated by the statute." *Best*, 179 Ill. 2d at 394 (citing *Grasse v. Dealer's Transport Co.*, 412 Ill. 179, 195 (1952)). "[I]n evaluating a challenged provision the court must consider the natural and reasonable effect of the legislation on the rights affected by the provision." *Best*, 179 Ill. 2d at 394 (citing *Grasse*, 412 Ill. at 193).

¶ 64 As an initial matter, it is important to note that Doe is challenging only one section of a larger statute; she is not contending that the Act as a whole constitutes special legislation but only that section 25(e) does. To be clear: while courts in other jurisdictions have considered equal protection challenges to statutes regulating TNCs, this is the first case addressing a special legislation challenge, as well as the first case considering the provision exempting TNCs from common-carrier liability. This distinguishes the case at bar from the cases in other jurisdictions, on which Lyft and the majority rely. It also focuses the inquiry before this court to one question: does exempting TNCs from common-carrier liability violate the special legislation clause? I would find that it does because there is no rational basis for treating a TNC differently than a taxicab with respect to the duty owed to its passengers. In fact, not only does section 25(e) treat TNCs differently than taxicabs, but it treats TNCs differently than *any* other entity that would fall within the definition of a common carrier.

¶ 65 Under Illinois law, "a common carrier is 'one who undertakes for the public to transport from place to place such persons or the goods of such persons as choose to employ him for hire.' " *Browne v. SCR Medical Transportation Services, Inc.*, 356 Ill. App. 3d 642, 646 (2005) (quoting *Illinois Highway Transportation Co. v. Hantel*, 323 Ill. App. 364, 374 (1944)).

Additionally, a common carrier must hold itself out to provide its services to the general public. *Ally Financial Inc. v. Pira*, 2017 IL App (2d) 170213, ¶ 46. A common carrier " 'undertakes for hire to carry all persons indifferently who may apply for passage so long as there is room and there is no legal excuse for refusal.' " *Browne*, 356 Ill. App. 3d at 646 (quoting *Hantel*, 323 Ill. App. at 376).

¶ 66 The heightened duty of care owed by a common carrier existed at common law and is not a creation of statute, a factor that our supreme court has found relevant in determining whether the legislature could impose limits on liability. See, *e.g.*, *Wright v. Central Du Page Hospital Ass'n*, 63 Ill. 2d 313, 329 (1976) ("Although we do not hold or even imply that under no circumstances may the General Assembly abolish a common law cause of action without a concomitant *quid pro quo*, we have consistently held that to the extent that recovery is permitted or denied on an arbitrary basis a special privilege is granted in violation of the Illinois Constitution."). Thus, the fact that the legislature has chosen to regulate TNCs and taxicabs differently in certain respects is not the relevant issue. Instead, the issue is that the legislature has chosen to exempt TNCs from a common-law duty that applies to taxicabs and other common carriers.

¶ 67 While the majority focuses on the differences between TNCs and taxicabs, the real difference that section 25(e) makes is in the relief available to the victims of crimes such as the sexual assault at issue here. Under section 25(e), victims of crimes that were committed by drivers of TNCs are basically prohibited from obtaining relief for acts of sexual predators, unlike victims of crimes that were committed by drivers of common carriers, such as taxicabs. The majority finds this distinction immaterial, concluding that "[w]hether a passenger is injured or attacked by a ridesharing driver rather than a taxicab driver does not result from happenstance but from the

passenger's voluntary decision to use a ridesharing service rather than a taxi service. As our supreme court has explained, 'relevant differences in the circumstances under which *** various voluntary relationships [are] created' may 'justif[y] the imposition of differing standards of care.' " *Supra* ¶ 49 (quoting *Grace v. Howlett*, 51 Ill. 2d 478, 488 (1972)). However, unlike the majority, I find no relevant differences in the circumstances under which a passenger takes a rideshare as opposed to taking a taxicab, so the mere fact that a passenger chose one form of transportation over the other should have no effect on the relief she is entitled to seek in court.

¶ 68 Additionally, the case that our supreme court was discussing in *Grace*, *Delany v. Badame*, 49 Ill. 2d 168 (1971), is a case in which the court upheld the constitutionality of a "guest statute," which increased the degree of fault required for a plaintiff to recover against the driver of a motor vehicle in which he was a passenger. The Delany court noted that the purpose of the statute was to "protect the interest of those who gratuitously extend the hospitality of their motor vehicles," and found unpersuasive the plaintiff's attempt to analogize the driver to the owner of a motorboat or home. *Delany*, 49 Ill. 2d at 171-72. The court, however, expressly noted that "the guest statute does not preclude a cause of action to the injured party but changes the degree of fault necessary for a recovery from that of the common law." *Delany*, 49 Ill. 2d at 174. In the case at bar, by contrast, section 25(e) operates to preclude a cause of action to the injured party by exempting TNCs from the duty they would otherwise owe their passengers.

¶ 69 The majority finds that "[i]n light of TNCs' extensive reliance on large networks of non-professional, part-time drivers, the General Assembly could reasonably conclude that holding those companies to principles of common carrier liability *** would be prohibitively burdensome for the industry." *Supra* ¶ 41. I find the opposite—the fact that TNCs rely on non-professional,

part-time drivers demonstrates that it is *unreasonable* for the General Assembly to weaken the protections given to the passengers of the TNCs. If anything, the fact that the drivers are not professionals and are driving passengers part-time in their own vehicles would suggest that TNCs should be required to assume even *more* responsibility for them, not less, to ensure passenger safety in the hands of such drivers. There is simply no rational reason to permit a company to be shielded from liability that it would otherwise be required to assume where that company is providing common-carrier services to passengers but is doing so through the use of individuals who are not full-time employees, who are not professionals, and who are largely using their own vehicles.

¶ 70 Most importantly, the constitution of the State of Illinois was adopted for a number of reasons, including "to provide for the health, safety and welfare of the people" and to "assure legal, social and economic justice." Ill. Const. 1970 pmbl. Section 25(e) violates both of these reasons. By exempting ridesharing companies from the heightened duty of care and the standard of vicarious liability that apply to common carriers, the legislature has totally disregarded the health, safety, and welfare of the people who would utilize the services of the ridesharing companies. Since the ridesharing companies would basically be immune from suit from the physical and mental injuries that stem from the evil deeds of sexual predators, the background checks that the companies are required to make would not be of the magnitude that they would be if liability would attach as a result of their negligence.

¶ 71 The largest expense for a common carrier is usually what they pay for liability insurance. Taxi companies pay large rates for their drivers, or over and above what the drivers pay, because of the taxicab companies' exposure to liability for their drivers' wrongful acts. As a result of

section 25(e), the ridesharing companies would have little or no liability due to the common-carrier exclusion given to them, and their insurance rates would reflect that advantage, causing the taxicab charges to be substantially greater than those of the ridesharing companies.

¶ 72 In addition, section 25(e) not only fails to assure legal, social, and economic justice, it creates an unjust result to the victims of sexually predatory drivers who use the services of ridesharing companies relying on their advertisements that they will have a safe ride. For all of the reasons stated herein, I find that the statutory exclusion at issue in section 25(e) discriminates in favor of ridesharing companies to the detriment of the taxicab companies and the people of the State of Illinois, and that the classification is arbitrary and thus violates the special legislation clause of the Illinois Constitution. Accordingly, for all of the reasons stated in this dissent, I would find that section 25(e) is unconstitutional and would answer the second certified question in the affirmative.

No. 1-19-1328

Cite as:	*Doe v. Lyft, Inc.*, 2020 IL App (1st) 191328
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 17-L-11355; the Hon. Patricia O'Brien Sheahan, Judge, presiding.
Attorneys for Appellant:	J. Timothy Eaton, Jonathan B. Amarilio, Allison E. Czerniak, and Ioana M. Guset, of Taft Stettinius & Hollister LLP, and Timothy S. Tomasik, Patrick J. Giese, and Patrick M. Grim, of Tomasik Kotin Kasserman, LLC, both of Chicago, for appellant.
Attorneys for Appellee:	Anthony J. Carballo and Martin Syvertsen, of Freeborn & Peters, LLP, of Chicago, and Beth A. Stewart (*pro hac vice*), of Williams & Connolly LLP, Washington, D.C., for appellee.
***Amicus Curiae*:**	Leslie J. Rosen, of Leslie J. Rosen Attorney at Law, PC, of Chicago, for *amicus curiae* Illinois Trial Lawyers Association. Joshua D. Yount, of Mayer Brown LLP, of Chicago, for *amicus curiae* Chamber of Commerce of the United States of America.

Bill Status of SB2774 *98th General Assembly*

Short Description: TAX RETURN PREPARER-REGULATION

Senate Sponsors
Sen. Antonio Muñoz and Martin A. Sandoval

House Sponsors
(Rep. Michael J. Zalewski)

Last Action

Date	Chamber	Action
1/12/2015	Senate	Public Act 98-1173

Statutes Amended In Order of Appearance
225 ILCS 450/30.9 new

Synopsis As Introduced
Amends the Illinois Public Accounting Act. Provides that the Department of Financial and Professional Regulation shall convene a task force in order to prepare a report that determines the appropriate scope of a program for regulating tax return preparers, addresses the appropriate qualifications for tax return preparers, and considers any other matters that the task force determines to be necessary or appropriate. Requires that the report be submitted no later than September 1, 2015 to the Secretary of Financial and Professional Regulation, the Governor, the Speaker of the House of Representatives, and the President of the Senate. Effective immediately.

Senate Floor Amendment No. 1
Replaces everything after the enacting clause. Amends the Illinois Public Accounting Act. Provides that the Department of Financial and Professional Regulation shall convene a task force in order to prepare a report that determines the appropriate scope of a program for regulating commercial tax return preparers, addresses the appropriate qualifications for commercial tax return preparers, and considers any other matters the task force determines to be necessary or appropriate. Further provides that the task force shall consist of 7 members, one of whom shall be appointed by the Department and be a representative of the Department; one of whom shall be appointed by the Department and be a representative of a statewide association representing CPAs; one of whom shall be appointed by the Department and be an enrolled agent or representative of the tax return preparation industry; one of whom shall be appointed by the majority caucus leader of the House of Representatives; one of whom shall be appointed by the majority caucus leader of the Senate; one of whom shall be appointed by the minority caucus leader of the House of Representatives; and one of whom shall be appointed by the minority caucus leader of the Senate. Requires that the report be submitted by no later than December 1, 2014 to the Secretary of Financial and Professional Regulation, the Governor, the Speaker of the House of Representatives, and the President of the Senate. Further provides that members of the task force shall receive no compensation, but shall be reimbursed for expenses necessarily incurred in the performance of their duties. Effective immediately.

Senate Floor Amendment No. 2
Replaces everything after the enacting clause with the bill as amended by Senate Amendment No. 1 with the following changes: adds the Director of Revenue or his or her designee as a member of the task force; requires that the task force submit its report to the Secretary of Financial and Professional Regulation, the Governor, the Speaker of the House of Representatives, and the President of the Senate by no later than December 1, 2015 (rather than December 1, 2014); and provides for the repeal of the provisions on July 1, 2016. Effective immediately.

Correctional Note (Dept of Corrections)

There are no penalty enhancements associated with this bill. The bill would have no fiscal or population impact on the Department of Corrections.

Land Conveyance Appraisal Note (Dept. of Transportation)

No land conveyances are included in this bill; therefore, there are no appraisals to be filed.

Fiscal Note (Financial & Professional Regulation)

This bill has minimal fiscal impact to the Department of Financial and Professional Regulation.

Judicial Note (Admin Office of the Illinois Courts)

This bill would neither increase nor decrease the number of judges needed in the State.

Housing Affordability Impact Note (Housing Development Authority)

This bill will have no effect on the cost of constructing, purchasing, owning, or selling a single-family residence.

State Mandates Fiscal Note (Dept. of Commerce & Economic Opportunity)

This bill does not create a State mandate.

Home Rule Note (Dept. of Commerce & Economic Opportunity)

This bill does not pre-empt home rule authority.

Pension Note (Government Forecasting & Accountability)

There is no discernible fiscal impact of any public pension system associated with this Bill.

State Debt Impact Note (Government Forecasting & Accountability)

This bill would not change the amount of authorization for any type of State-issued or State-supported bond, and, therefore, would not affect the level of State indebtedness.

Balanced Budget Note (Office of Management and Budget)

SB 2774 will have an impact of less than $1,000 for reimbursements in other State funds. The Bill would have a minimal impact to the State budget.

House Floor Amendment No. 1

Deletes reference to:

225 ILCS 450/30.9

Adds reference to:

New Act

625 ILCS 30/2 from Ch. 95 1/2, par. 902

Replaces everything after the enacting clause. Creates the Transportation Network Providers Act. Requires transportation network companies and participating drivers to maintain transportation network company insurance. Provides for driver requirements. Requires transportation network companies to adopt a non-discrimination policy towards passengers. Provides for both safety and operational requirements. Amends the Ridesharing Arrangements Act to make conformity changes.

Land Conveyance Appraisal Note, House Floor Amendment No. 1 (Dept. of Transportation)

No land conveyances are included in this bill; therefore, there are no appraisals to be filed.

Correctional Note, House Floor Amendment No. 1 (Dept of Corrections)

There are no penalty enhancements associated with this bill. The bill would have no fiscal or population impact on the Department of Corrections.

Pension Note, House Floor Amendment No. 1 (Government Forecasting & Accountability)

There is no discernible fiscal impact of any public pension system associated with this Bill.

State Debt Impact Note, House Floor Amendment No. 1 (Government Forecasting & Accountability)

This bill would not change the amount of authorization for any type of State-issued or State-supported bond, and, therefore, would not affect the level of State indebtedness.

Home Rule Note, House Floor Amendment No. 1 (Dept. of Commerce & Economic Opportunity)

This bill does not pre-empt home rule authority.

State Mandates Fiscal Note, House Floor Amendment No. 1 (Dept. of Commerce & Economic Opportunity)

This bill does not create a State mandate.

Balanced Budget Note, House Floor Amendment No. 1 (Office of Management and Budget)

This bill has no impact on the State Budget.

Fiscal Note, House Floor Amendment No. 1 (Office of Management and Budget)

This bill would have no fiscal impact to the Governor's Office of Management and Budget.

Judicial Note, House Floor Amendment No. 1 (Admin Office of the Illinois Courts)

This bill would neither increase nor decrease the number of judges needed in the State.

Actions

Date	Chamber	Action
1/30/2014	Senate	Filed with Secretary by Sen. Terry Link
1/30/2014	**Senate**	**First Reading**
1/30/2014	Senate	Referred to Assignments
2/11/2014	Senate	Assigned to Licensed Activities and Pensions
2/20/2014	Senate	Do Pass Licensed Activities and Pensions; 008-000-000
2/20/2014	Senate	Placed on Calendar Order of 2nd Reading February 25, 2014
3/3/2014	Senate	Senate Floor Amendment No. 1 Filed with Secretary by Sen. Terry Link
3/3/2014	Senate	Senate Floor Amendment No. 1 Referred to Assignments
3/4/2014	**Senate**	**Second Reading**
3/4/2014	Senate	Placed on Calendar Order of 3rd Reading March 5, 2014
3/5/2014	Senate	Senate Floor Amendment No. 1 Assignments Refers to Licensed Activities and Pensions
3/6/2014	Senate	Senate Floor Amendment No. 1 Recommend Do Adopt Licensed Activities and Pensions; 007-000-000
3/6/2014	Senate	Recalled to Second Reading
3/6/2014	Senate	Senate Floor Amendment No. 1 Adopted; Link
3/6/2014	Senate	Placed on Calendar Order of 3rd Reading March 19, 2014

SR0163

4/1/2014	Senate	Senate Floor Amendment No. 2 Filed with Secretary by Sen. Terry Link
4/1/2014	Senate	Senate Floor Amendment No. 2 Referred to Assignments
4/7/2014	Senate	Senate Floor Amendment No. 2 Assignments Refers to Licensed Activities and Pensions
4/9/2014	Senate	Senate Floor Amendment No. 2 Recommend Do Adopt Licensed Activities and Pensions; 010-000-000
4/9/2014	Senate	Recalled to Second Reading
4/9/2014	Senate	Senate Floor Amendment No. 2 Adopted; Link
4/9/2014	Senate	Placed on Calendar Order of 3rd Reading
4/9/2014	**Senate**	**Third Reading - Passed; 057-000-000**
4/10/2014	House	Arrived in House
4/10/2014	House	Chief House Sponsor Rep. Michael J. Madigan
4/10/2014	**House**	**First Reading**
4/10/2014	House	Referred to Rules Committee
5/8/2014	House	Assigned to Executive Committee
5/16/2014	House	Committee Deadline Extended-Rule 9(b) May 23, 2014
5/23/2014	House	Final Action Deadline Extended-9(b) May 30, 2014
5/26/2014	House	Do Pass / Short Debate Executive Committee; 007-004-000
5/26/2014	House	Placed on Calendar 2nd Reading - Short Debate
5/26/2014	**House**	**Second Reading - Short Debate**
5/26/2014	House	Held on Calendar Order of Second Reading - Short Debate
5/27/2014	House	Fiscal Note Requested by Rep. Ed Sullivan, Jr.
5/28/2014	House	Correctional Note Filed
5/28/2014	House	Land Conveyance Appraisal Note Filed
5/28/2014	House	Fiscal Note Filed
5/28/2014	House	Judicial Note Filed
5/28/2014	House	Housing Affordability Impact Note Filed
5/28/2014	House	State Mandates Fiscal Note Filed
5/28/2014	House	Home Rule Note Filed
5/28/2014	House	Pension Note Filed
5/28/2014	House	State Debt Impact Note Filed
5/29/2014	House	Balanced Budget Note Filed
5/30/2014	House	Rule 19(a) / Re-referred to Rules Committee
5/30/2014	Senate	Added as Co-Sponsor Sen. Martin A. Sandoval
11/25/2014	House	Approved for Consideration Rules Committee; 004-000-000
11/25/2014	House	Placed on Calendar 2nd Reading - Short Debate
12/2/2014	House	House Floor Amendment No. 1 Filed with Clerk by Rep. Michael J. Zalewski
12/2/2014	House	House Floor Amendment No. 1 Referred to Rules Committee
12/2/2014	House	House Floor Amendment No. 1 Rules Refers to Business & Occupational Licenses Committee
12/2/2014	Senate	Chief Sponsor Changed to Sen. Antonio Muñoz
12/3/2014	House	Alternate Chief Sponsor Changed to Rep. Michael J. Zalewski
12/3/2014	House	House Floor Amendment No. 1 Recommends Be Adopted Business & Occupational Licenses Committee; 007-002-001
12/3/2014	House	

SR0164

A112

		House Floor Amendment No. 1 Land Conveyance Appraisal Note Filed as Amended
12/3/2014	House	House Floor Amendment No. 1 Correctional Note Filed as Amended
12/3/2014	House	House Floor Amendment No. 1 Pension Note Filed as Amended
12/3/2014	House	House Floor Amendment No. 1 State Debt Impact Note Filed as Amended
12/3/2014	House	House Floor Amendment No. 1 Home Rule Note Filed as Amended
12/3/2014	House	House Floor Amendment No. 1 State Mandates Fiscal Note Filed as Amended
12/3/2014	House	House Floor Amendment No. 1 Balanced Budget Note Filed as Amended
12/3/2014	House	House Floor Amendment No. 1 Fiscal Note Filed as Amended
12/3/2014	House	House Floor Amendment No. 1 Adopted
12/3/2014	House	Placed on Calendar Order of 3rd Reading - Short Debate
12/3/2014	House	House Floor Amendment No. 1 Judicial Note Filed as Amended
12/3/2014	**House**	**Third Reading - Short Debate - Passed** 105-007-002
12/3/2014	Senate	Secretary's Desk - Concurrence House Amendment(s) 1
12/3/2014	Senate	Placed on Calendar Order of Concurrence House Amendment(s) 1 - December 3, 2014
12/3/2014	Senate	House Floor Amendment No. 1 Motion to Concur Filed with Secretary Sen. Antonio Muñoz
12/3/2014	Senate	House Floor Amendment No. 1 Motion to Concur Referred to Assignments
12/3/2014	Senate	House Floor Amendment No. 1 Motion to Concur Assignments Referred to Executive
12/3/2014	Senate	House Floor Amendment No. 1 Motion To Concur Recommended Do Adopt Executive; 014-000-000
12/3/2014	Senate	House Floor Amendment No. 1 Senate Concurs 052-002-001
12/3/2014	Senate	Passed Both Houses
12/15/2014	Senate	Sent to the Governor
1/12/2015	Senate	Governor Approved
1/12/2015	Senate	Effective Date June 1, 2015
1/12/2015	**Senate**	**Public Act 98-1173**

SB2774

LRB098 17851 ZMM 52975 b

98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2774

Introduced 1/30/2014, by Sen. Terry Link

SYNOPSIS AS INTRODUCED:

225 ILCS 450/30.8 new

Amends the Illinois Public Accounting Act. Provides that the Department of Financial and Professional Regulation shall convene a task force in order to prepare a report that determines the appropriate scope of a program for regulating tax return preparers, addresses the appropriate qualifications for tax return preparers, and considers any other matters that the task force determines to be necessary or appropriate. Requires that the report be submitted no later than September 1, 2015 to the Secretary of Financial and Professional Regulation, the Governor, the Speaker of the House of Representatives, and the President of the Senate. Effective immediately.

LRB098 17851 ZMM 52975 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

AN ACT concerning regulation.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Public Accounting Act is amended by adding Section 30.9 as follows:

(225 ILCS 450/30.9 new)

Sec. 30.9. Tax return preparation task force. The Department shall convene a task force consisting of representatives from the Department, Board of Examiners, a statewide association representing CPAs, and enrolled agents and representatives of the tax return preparation industry in order to prepare a report that does the following: determines the appropriate scope of a program for regulating tax return preparers and commercial tax return preparers; addresses the appropriate qualifications, including, but not limited to, minimum educational qualifications and continuing educational requirements for tax return preparers; and considers any other matters the task force determines to be necessary or appropriate. The report required under this Section shall be submitted by no later than September 1, 2015 to the Secretary of Financial and Professional Regulation, the Governor, the Speaker of the House of Representatives, and the President of the Senate.

Section 99. Effective date. This Act takes effect upon becoming law.

Rep. Michael J. Zalewski

Filed: 12/2/2014

09800SB2774ham001 LRB098 17851 RJF 62681 a

AMENDMENT TO SENATE BILL 2774

AMENDMENT NO. _____. Amend Senate Bill 2774 by replacing everything after the enacting clause with the following:

"Section 1. Short title. This Act may be cited as the Transportation Network Providers Act.

Section 5. Definitions.

"Transportation network company" or "TNC" means an entity operating in this State that uses a digital network or software application service to connect passengers to transportation network company services provided by transportation network company drivers. A TNC is not deemed to own, control, operate, or manage the vehicles used by TNC drivers, and is not a taxicab association or a for-hire vehicle owner.

"Transportation network company driver" or "TNC driver" means an individual who operates a motor vehicle that is:

(1) owned, leased, or otherwise authorized for use by

the individual;

(2) not a taxicab or for-hire public passenger vehicle; and

(3) used to provide transportation network company services.

"Transportation network company services" or "TNC services" means transportation of a passenger between points chosen by the passenger and prearranged with a TNC driver through the use of a TNC digital network or software application. TNC services shall begin when a TNC driver accepts a request for transportation received through the TNC's digital network or software application service, continue while the TNC driver transports the passenger in the TNC driver's vehicle, and end when the passenger exits the TNC driver's vehicle. TNC service is not a taxicab, for-hire vehicle, or street hail service.

Section 10. Insurance.

(a) Transportation network companies and participating TNC drivers shall comply with the automobile liability insurance requirements of this Section as required.

(b) The following automobile liability insurance requirements shall apply from the moment a participating TNC driver logs on to the transportation network company's digital network or software application until the TNC driver accepts a request to transport a passenger, and from the moment the TNC

driver completes the transaction on the digital network or software application or the ride is complete, whichever is later, until the TNC driver either accepts another ride request on the digital network or software application or logs off the digital network or software application:

(1) Automobile liability insurance shall be in the amount of at least $50,000 for death and personal injury per person, $100,000 for death and personal injury per incident, and $25,000 for property damage.

(2) Contingent automobile liability insurance in the amounts required in paragraph (1) of this subsection (b) shall be maintained by a transportation network company and provide coverage in the event a participating TNC driver's own automobile liability policy excludes coverage according to its policy terms or does not provide at least the limits of coverage required in paragraph (1) of this subsection (b).

(c) The following automobile liability insurance requirements shall apply from the moment a TNC driver accepts a ride request on the transportation network company's digital network or software application until the TNC driver completes the transaction on the digital network or software application or until the ride is complete, whichever is later:

(1) Automobile liability insurance shall be primary and in the amount of $1,000,000 for death, personal injury, and property damage. The requirements for the coverage

required by this paragraph (1) may be satisfied by any of the following:

(A) automobile liability insurance maintained by a participating TNC driver;

(B) automobile liability company insurance maintained by a transportation network company; or

(C) any combination of subparagraphs (A) and (B).

(2) Insurance coverage provided under this subsection (c) shall also provide for uninsured motorist coverage and underinsured motorist coverage in the amount of $50,000 from the moment a passenger enters the vehicle of a participating TNC driver until the passenger exits the vehicle.

(3) The insurer, in the case of insurance coverage provided under this subsection (c), shall have the duty to defend and indemnify the insured.

(4) Coverage under an automobile liability insurance policy required under this subsection (c) shall not be dependent on a personal automobile insurance policy first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.

(d) In every instance when automobile liability insurance maintained by a participating TNC driver to fulfill the insurance obligations of this Section has lapsed or ceased to exist, the transportation network company shall provide the coverage required by this Section beginning with the first

dollar of a claim.

(e) This Section shall not limit the liability of a transportation network company arising out of an automobile accident involving a participating TNC driver in any action for damages against a transportation network company for an amount above the required insurance coverage.

(f) The transportation network company shall disclose in writing to TNC drivers, as part of its agreement with those TNC drivers, the following:

(1) the insurance coverage and limits of liability that the transportation network company provides while the TNC driver uses a vehicle in connection with a transportation network company's digital network or software application; and

(2) that the TNC driver's own insurance policy may not provide coverage while the TNC driver uses a vehicle in connection with a transportation network company digital network depending on its terms.

(g) An insurance policy required by this Section may be placed with an admitted Illinois insurer, or with an authorized surplus line insurer under Section 445 of the Illinois Insurance Code; and is not subject to any restriction or limitation on the issuance of a policy contained in Section 445a of the Illinois Insurance Code.

(h) Any insurance policy required by this Section shall satisfy the financial responsibility requirement for a motor

vehicle under Sections 7-203 and 7-601 of the Illinois Vehicle Code.

Section 15. Driver requirements.

(a) Prior to permitting an individual to act as a TNC driver on its digital platform, the TNC shall:

(1) require the individual to submit an application to the TNC, which includes information regarding his or her address, age, driver's license, driving history, motor vehicle registration, automobile liability insurance, and other information required by the TNC;

(2) conduct or have a third party conduct, a local and national criminal history background check for each individual applicant that shall include:

(A) Multi-State or Multi-Jurisdictional Criminal Records Locator or other similar commercial nationwide database with validation (primary source search); and

(B) National Sex Offenders Registry database; and

(3) obtain and review a driving history research report for the individual.

(b) The TNC shall not permit an individual to act as a TNC driver on its digital platform who:

(1) has had more than 3 moving violations in the prior three-year period, or one major violation in the prior three-year period including, but not limited to, attempting to evade the police, reckless driving, or

driving on a suspended or revoked license;

(2) has been convicted, within the past 7 years, of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage, or theft, acts of violence, or acts of terror;

(3) is a match in the National Sex Offenders Registry database;

(4) does not possess a valid driver's license;

(5) does not possess proof of registration for the motor vehicle used to provide TNC services;

(6) does not possess proof of automobile liability insurance for the motor vehicle used to provide TNC services; or

(7) is under 19 years of age.

Section 20. Non-discrimination.

(a) The TNC shall adopt and notify TNC drivers of a policy of non-discrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity with respect to passengers and potential passengers.

(b) TNC drivers shall comply with all applicable laws regarding non-discrimination against passengers or potential passengers on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age,

sexual orientation, or gender identity.

(c) TNC drivers shall comply with all applicable laws relating to accommodation of service animals.

(d) A TNC shall not impose additional charges for providing services to persons with physical disabilities because of those disabilities.

(e) A TNC shall provide passengers an opportunity to indicate whether they require a wheelchair accessible vehicle. If a TNC cannot arrange wheelchair-accessible TNC service in any instance, it shall direct the passenger to an alternate provider of wheelchair-accessible service, if available.

(f) If a unit of local government has requirements for licensed chauffeurs not to discriminate in providing service in under-served areas, TNC drivers participating in TNC services within that unit of local government shall be subject to the same non-discrimination requirements for providing service in under-served areas.

Section 25. Safety.

(a) The TNC shall implement a zero tolerance policy on the use of drugs or alcohol while a TNC driver is providing TNC services or is logged into the TNC's digital network but is not providing TNC services.

(b) The TNC and shall provide notice of the zero tolerance policy on its website, as well as procedures to report a complaint about a driver with whom a passenger was matched and

whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

(c) Upon receipt of a passenger's complaint alleging a violation of the zero tolerance policy, the TNC shall immediately suspend the TNC driver's access to the TNC's digital platform, and shall conduct an investigation into the reported incident. The suspension shall last the duration of the investigation.

(d) The TNC shall require that any motor vehicle that a TNC driver will use to provide TNC Services meets vehicle safety and emissions requirements for a private motor vehicle in this State.

(e) TNCs or TNC drivers are not common carriers, contract carriers or motor carriers, as defined by applicable state law, nor do they provide taxicab or for-hire vehicle service.

Section 30. Operational.

(a) A TNC may charge a fare for the services provided to passengers; provided that, if a fare is charged, the TNC shall disclose to passengers the fare calculation method on its website or within the software application service.

(b) The TNC shall provide passengers with the applicable rates being charged and the option to receive an estimated fare before the passenger enters the TNC driver's vehicle.

(c) The TNC's software application or website shall display a picture of the TNC driver, and the license plate number of

the motor vehicle utilized for providing the TNC service before the passenger enters the TNC driver's vehicle.

(d) Within a reasonable period of time following the completion of a trip, a TNC shall transmit an electronic receipt to the passenger that lists:

(1) the origin and destination of the trip;

(2) the total time and distance of the trip; and

(3) an itemization of the total fare paid, if any.

(e) Dispatches for TNC services shall be made only to eligible TNC drivers under Section 15 of this Act who are properly licensed under State law and local ordinances addressing these drivers if applicable.

(f) A taxicab may accept a request for transportation received through a TNC's digital network or software application service, and may charge a fare for those services that is similar to those charged by a TNC.

Section 35. The Ridesharing Arrangements Act is amended by changing Section 2 as follows:

(625 ILCS 30/2) (from Ch. 95 1/2, par. 902)

Sec. 2. (a) "Ridesharing arrangement" means the transportation by motor vehicle of not more than 16 persons (including the driver):

(1) for purposes incidental to another purpose of the driver, for which no fee is charged or paid except to reimburse

the driver or owner of the vehicle for his operating expenses on a nonprofit basis; or

(2) when such persons are travelling between their homes and their places of employment, or places reasonably convenient thereto, for which (i) no fee is charged or paid except to reimburse the driver or owner of the vehicle for his operating expenses on a nonprofit basis, or (ii) a fee is charged in accordance with the provisions of Section 6 of this Act.

(b) "For-profit ridesharing arrangement" means a ridesharing arrangement for which a fee is charged in accordance with Section 6 of this Act, and does not include transportation network company services under the Transportation Network Providers Act.

(Source: P.A. 83-1091.)".

Senate Bills on Second Reading, we have Senate Bill 2774. Mr. Clerk."

Clerk Bolin: "Senate Bill 2774, a Bill for an Act concerning regulation. The Bill was read for a second time on a previous day. No Committee Amendments. Floor Amendment #1 is offered by Representative Zalewski."

Speaker Turner: "Representative Zalewski."

Zalewski: "Mr. Speaker, I move for the adoption of Floor Amendment #1. It becomes the Bill. I'm happy to discuss the Bill on Third."

Speaker Turner: "Seeing no debate the Gentleman moves that the House adopt Floor Amendment #1 to Senate Bill 2774. All in favor say 'aye'; all opposed say 'nay'. In the opinion of the Chair, the 'ayes' have it. And the Amendment is adopted. Mr. Clerk."

Clerk Bolin: "No further Amendments. No Motions are filed."

Speaker Turner: "Third Reading. Mr. Clerk, please read the Bill."

Clerk Bolin: "Senate Bill 2774, a Bill for an Act concerning regulation. Third Reading of this Senate Bill."

Speaker Turner: "Representative Zalewski."

Zalewski: "Thank you, Mr. Speaker. Senate Bill 2774 represents our attempts to impose a commercial ridesharing Act on Illinois. We were all very familiar with this issue. Over the course of the holiday break, we came... we engaged in negotiations with Uber and tried to reach an agreement. And this encapsulates that agreement. It's a lighter version of what we passed in the spring dealing with driver regulations, dealing with local ability to regulate these services, and dealing with insurance. We're doing this now because we... we

agreed to do it in the 98th General Assembly. And it's important to protect our constituent's safety and get something on the books as soon as possible. I'd ask for an 'aye' vote."

Speaker Turner: "On that, we have Representative Sandack."

Sandack: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "The Sponsor will yield."

Sandack: "Mike, can you just walk through, a little bit, for folks that haven't been playing close attention, the agreement… the components in the agreement."

Zalewski: "I… I think, everyone's been playing close attention, Ron. I take offen… umbrage with that remark. I'm just teasing you. Starting with insurance, when the app is on and there's a ride in progress, there… there has to be a thousand… a million dollars in coverage for death, personal injury, and property damage, 50 thousand dollars in coverage for uninsured, underinsured motorists. When there's no ride, when there's not passenger in the vehicle, but the app is on, the coverages are 50thousand per person for death and personal injury, hundred thousand for death and personal injury per incident, and 25 thousand for property damage. And the ridesharing company must maintain contingent automobile insurance in the amounts above in the event the… the company's own policy excludes that coverage based on its policy and terms. There has to be disclosure of insurance requirements. And then we deal with driver eligibility. There has to be a requirement that the individual submit an application giving their age, their driving history, their driver's license status, criminal… national and local criminal background

checks, and in review a driving history search. There's a requirements of who and who can't be a driver. There's nondiscrimination policy. And there's safety and operational requirements in the Bill."

Sandack: "Thank you. And you're not wrong. There's been quite a bit of attention. But for the record, and for some people that maybe haven't…"

Zalewski: "I…"

Sandack: "…put this at the forefront, it's kind of important to get those details out."

Zalewski: "Understood."

Sandack: "Mike, I need you to exam… help me out with one concept on the insurance side. I've heard anecdotally that there… the… that many of the insurers do not support the agreement."

Zalewski: "Right."

Sandack: "And I'm… I suspect it has to with on-duty versus off-duty ridesharing components."

Zalewski: "It has to do with when the app is on, but… It has to do with when the app in on, but the person's not in the car. This is what's called app on picked coverage period."

Sandack: "Okay. Can you just tell me… elaborate a little bit on what the difficulty is with the insurers?"

Zalewski: "I… I think they would argue… they would like to see a mandate that we passed in the spring requiring this full coverage policy in place. They would like to see us do that. I think, in conversations with Uber and conversations with the… with the companies, they feel that this is a market issue. And either the market will adjust to these new and innovative technologies or eventually… or there's enough

safety in pla… there's enough safety for the passenger in place with this contingent policy that they believe works in Chicago and has worked in other places. So, I know they… they expressed their disagreement with the… with the removing that in committee today. My sense is we'll be revisiting this issue or the market will adjust. But…"

Sandack: "Well, could I… let me… Could I stop you there?"

Zalewski: "Yeah."

Sandack: "So, are they asking you for a trailer? Are they opposed right now?"

Zalewski: "My understanding is stet property casual (sic-casualty) insurers in the insurance industry are opposed, as we speak."

Sandack: "Right. 'Cause you were answering previously as if there was a trailer Bill. So, I wanted to make sure. They're still opposed, but you're open to a trailer Bill?"

Zalewski: "I think we'll be revisiting the issue soon."

Sandack: "All right. And other than the insurers that you've spoken of, with respect to this app, any other opponents of the agreement, as we stand here, today?"

Zalewski: "I don't know about one of the ridesharing companies knows as Lyft. I don't recall. Sidecar, which is a third company, has an issue with our language in terms of the receipt. I've committed to their representative; we should revisit that. The bankers would like to see some language on the liens. We'll have to take a look at that. So, again, we felt it was important to honor the agreement we made with Uber, but my sense is we're not quite finished with this issue yet."

Sandack: "Okay. Moving on to another issue, Mike, that came up in the original Bill. The concept of Home Rule."

Zalewski: "Yeah."

Sandack: "How does Home Rule fit in? Are we preempting or are we leaving things as is?"

Zalewski: "We… we went to a standard by which local authorities are given exclusive ability to regulate these issues, with the exception of what we articulate in our Bill. So, we're silent in our Bill. The local gets to decide it."

Sandack: "All right. For Chicago, they have…"

Zalewski: "They have."

Sandack: "I think, some ordinances in place. One or more, with respect to ridesharing, whether it's Uber or another provider. This doesn't do anything to what Chicago has already done."

Zalewski: "No. No."

Sandack: "Or what any locality wants to do going forward."

Zalewski: "Correct. Correct, Ron."

Sandack: "Thank you. To the Bill. The Sponsor has been working tirelessly. And I appreciate his being open to talk about this issue one more time. It's complex. It obviously has divergent interest. And of course, new novel things always take time here in Illinois. We don't necessarily embrace them. But I know the efforts have been employed by Representative Zalewski. I appreciate them. And thanks for answering the questions."

Speaker Turner: "Representative David Harris."

Harris, D.: "Thank you… thank you, Mr. Speaker. And questions of the Sponsor?"

Speaker Turner: "The Sponsor will yield."

Harris, D.: "So, Representative, it's an agreed Bill that not everyone agrees with."

Zalewski: "Yeah. Welcome to this issue, Representative. Yes. Yes, that… Uber agrees with this Bill."

Harris, D.: "Well, Uber agrees with the Bill. The rights…"

Zalewski: "The insurance… the industry… the industry… the insurance industry has challenges with it and there's a couple of… a couple of other challenges, as well. But we're going to try to work those out as soon as we possibly can."

Harris, D.: "So, we expect to see another Bill, probably then. Stet."

Zalewski: "I would be stunned if we didn't."

Harris, D.: "Is there any limitation on the number of driving hours that someone can operate in a ridesharing app?"

Zalewski: "We give that regulatory power to… well, we're silent on it… we give it to the local governments' ability to regulate that."

Harris, D.: "Okay. What about surge pricing? Which is an issue that developed with the ridesharing apps. Is there any limitation on surge pricing?"

Zalewski: "What we say is if a ride is hailed on a transportation digital network or… what these are in the statute, that rul… the same rules apply for everybody. So, if you could surge price if your Uber, you can surge price as long as you have an app that's functional and it's on the network. Because again, Uber felt that this was a restriction on the market to touch that. So, our feeling was, well, let's give the locals the ability to regulate that any way they want."

Harris, D.: "Is there any regulation on surge pricing in the city of Chicago's regulations?"

Zalewski: "I think there's a requirement that they tell the riders when they hit… for the ride that their surge is in effect. Stet, when you get an Uber ride…"

Harris, D.: "So… so, taxi cab fare that might normally be $10, if there… if there… it's snowing or raining and there's not a taxi cab available, that ridesharing app might charge you $20 or $30 or more dollars for what…"

Zalewski: "If… if a taxi… No. If a taxi chooses to get dispatched by an app… if a local government has a disclosure requirement about surge pricing going into effect, that regulation is imposed upon both now, taxis and ridesharing companies."

Harris, D.: "Okay. Well, Ladies and Gentlemen, this is an agreed Bill. This agreed Bill that will probably pass with, who knows, 90 or 100 votes, but let me tell you why I'm going to be one of the 'no' votes. And first of all, I want to compliment the Gentleman on the work that he has done on the Bill. He clearly has recognized that there are important issues dealing with the regulation of ridesharing applications like Uber and Lyft and others. And there really are serious issues to be addressed. As an example, the security of passengers, background checks for drivers. You know, you want to make sure that when you're picked up and taken to your home that the driver's not 'Joe the sexual assaulter'. I had a conversation, as an example, with my young son, who is a young professional in the Chicago area and all of his friends use Uber. And he talked to me over the Thanksgiving holiday, and he said, you know, my female friends

get hit on by their Uber drivers. Because what's the one thing that… that ridesharing driver has that a taxicab driver probably doesn't have, they have your cell phone number. And they are calling, not all, but they are calling up passengers that they might like to date later on. Are we addressing that? I don't know that we are. The insurance coverage is an issue. And I think the insurance industry is concerned that the coverage when the app is on, not when there's a passenger in the vehicle, but when the app is on is insufficient. So, the Gentleman recognized that there was a… was a wide range of issues that had to be addressed. And you know what, he did that in House Bill 4075. It was a good Bill. It was, in my opinion, the right way to go. And that's one of the reasons I'm voting 'no' because House Bill 4075 was a better Bill. Now, I'm not against innovation. I'm not against competition. As a matter of fact, the taxicab industry has had virtually a monopoly. And the best way to defeat a monopoly is to introduce competition into the marketplace. And the ridesharing apps do that. They bring in competition. And that's a good thing, but the regulation of apps, ridesharing apps, is warranted. And let me read, just very briefly, a sentence from the Chicago Tribune editorial of August the 26. And it says, Governor Pat Quinn was presented with a tough choice… and get this… with a tough choice between the desire to protect consumers and the desire to promote innovation. On Monday, he decided to err on the side of innovation by vetoing House Bill 4075. Now, the Tribune went on to say that that's what they wanted. They wanted a veto of the Bill. But think about that, …a tough choice between the desire to protect

consumers and the desire to promote innovation. You know what, I'm for innovation, but I'm more for protecting consumers. And I think that House Bill 4075 did a better job of protecting consumers than this Bill does. It introduced sensible and reasonable regulations that, I think, this Bill is weak on. And I'll close by simply saying the regulations in 4075 didn't prevent the ridesharing apps from operating. It didn't put them out of business. The Tribune in its final sentence said, regulation should make it better not make it shrink. And you know what, the Bill that we had was… 4075 was good regulation. This is okay. But the Gentleman, himself… the Gentleman, himself, for all of his hard work, has said there is more to come. If there's more to come, let's not pass this. Let's go back and get it right from the beginning. That's why I'm voting 'no'. Thank you."

Speaker Turner: "Representative Ives."

Representative Ives: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "The Sponsor will yield."

Representative Ives: "Just a couple questions along the same vein as Representative David Harris spoke about. And Representative Zalewski, is this strictly an agreed Bill between you and Uber? And where is Sidecar and Lyft on it?"

Zalewski: "So, Sidecar has a challenge, Jeanne, with a piece of the Bill dealing with a type of receipt you give… ridesharing company gives. And what, basically, their challenge is, is we require certain disclosures in a receipt. It's a small issue. My understanding, from their representation, is they're comfortable; we can get it worked out soon enough. I have not

been told what Lyft… how they feel about this Bill. I don't recall if they filed a slip. I simply don't know the answer to that."

Ives: "Okay. And why… is there a rush to get this done now, for some reason r because… I know you can do rideshare in Naperville and in Wheaton, and I'm imagining they're regulated to some degree. Or are you saying there's absolutely no regulation other than what that industry is putting on itself?"

Zalewski: "So, there's two reasons why I want to do it now. The first is because we said we would. When we agreed not to call the Motion, we said we would work this out before the expiration of this General Assembly. And I just think, it's good to keep our word. The second reasoning behind it is this is an incredibly… and I'm not trying to… it's a very hard issue to deal with in terms of legislation and statute making. And I don't feel as though this can linger on, because it's just hard to get agreement on these issues. So, my feeling is if I have an agreement… and I just got a text that Lyft is okay with the Bill… My feeling is that if we have agreement we should pass a Bill and not risk having this regulatory vacuum in the State of Illinois."

Ives: "And do you intend to work with the insurance companies then, also, on an agreed process? What is actually going to… what are you going to work on in the next GA?"

Zalewski: "I think that the insurance industry is convinced that the market won't adjust to what these companies are doing. That there won't be… that eventu… that there won't be policies

put in place that cover this period of app off… or app on, but driver not in the car."

Ives: "Mmm mmm."

Zalewski: "Conversely, I think, Uber and Lyft are of the opinion the market's already adjusting. And that eventually there's not going to be a need for legislation mandating these coverages. It's… You should know, Jeanne, it's a mandate. What the insurance company's asking for is a mandate. So, to answer your question, do I think the insurance company will want to adjust this in the spring? Yes, I do. Do I ultimately think this Body will allow that to happen? I'm not entirely sure yet."

Ives: "Okay. Thank you."

Speaker Turner: "Representative Mautino."

Mautino: "Will the Gentleman yield?"

Speaker Turner: "The Gentleman will yield."

Mautino: "Mike, I do intend to support your Bill. I know that you've gotten to a agreement, but I'd… would like to get a commitment to work on the insurance portion. Because as I've seen this… the original Bill that passed had recoverage through all three periods. When someone was trolling for a match, the app was on. Then when they hooked up and the apps made the contract and then when they were in the car, you had a million dollars' worth of coverage during that point. Now, that was agreed to by this Body and is probably a protection that the consumers deserve. Where you may end up is in the time when that app is on prior to them making the agreement, you have a red zone where…"

Zalewski: "A gap."

Mautino: "That's your gap coverage. And so, the personalized insurance may say, you know what, we're not covered at that point and the company may not wish to cover it. So, you have a potential source of a lot of litigation. And I think that's a piece that was worked through in the original Bill that should've stayed. So, I'll support this, but I do believe that you have a glaring gap within that coverage. And I know, I've worked with you on other issues. This is one where we don't want to see litigation when there are already two separate forms of making this correct."

Zalewski: "I agree, Leader. And I appreciate... You obviously have a lot more expertise on insurance than I do. I think, I'm fully aware and committing to you that we will evaluate these insurance concerns going forward and work with you and the others in the spring. I do, though, believe that the market may adjust too. So, I want to leave the possibility for that. But you have my word, we'll continue to evaluate the Act as we go forward."

Mautino: "It may and it may not adjust. But there really shouldn't be a time when an individual consumer does not have the full million dollar coverage that an app on, which is still not the best way to do this, would provide. So, in order to ensure that we don't have those, I look forward to a trailer Bill."

Zalewski: "Thank you. Thank you, Leader."

Speaker Turner: "Representative Tracy."

Tracy: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "The Sponsor will yield."

Tracy: "Representative Zalewski, what kind of background checks do they do for taxicab drivers in the State of Illinois?"

Zalewski: "So, a taxi driver has to obtain an initial chauffer's license. So, that necessarily requires them to obtain a background check from, I believe, the licensing agency, their Secretary of State, or department of regulation. I don't know which one."

Tracy: "Does that background check include... I'm presuming it includes an investigation as to whether, of course, they have a valid... ability to have an Illinois driver's license. Does it include criminal background?"

Zalewski: "I would assume it has a driving history background, correct."

Tracy: "What about criminal background?"

Zalewski: "What about criminal? Yes."

Tracy: "And if you have a criminal background, are you prohibited from having a chauffeur's license?"

Tracy: "Jill I'm having a hard time hearing you. Can you repeat that?"

Tracy: "If you have a criminal background, are you prohibited from having a chauffer's license?"

Zalewski: "I don't know the answer to that. My guess is depending on the nature of the criminal background. And some things are probably disqualifying and some things probably aren't."

Tracy: "In comparison then, for a person that would want to be an Uber driver, what type of background check would be provided on those persons?"

Zalewski: "So, under this Bill?"

Tracy: "Yes."

Zalewski: "Under this Bill, we give the local govern... local unit of government complete discretion to determine how they're

going to proceed with background checks. So, the city… But we will require… we will require local and national criminal background checks."

Tracy: "Okay. And if it comes back with… say a person was a convicted sex offender, what… would that driver be able to be a Uber driver?"

Zalewski: "I don't think so. I don't know. If they're in the sex offender database, the answer is no."

Tracy: "So, your answer is no?"

Zalewski: "Right."

Tracy: "What other kind of criminal background conviction would prohibit somebody from being a Uber driver?"

Zalewski: "Three or more… Is a match in the database for sex offender, has been convicted within the last seven years for DUI, fraud, sexual offenses, use of a vehicle to commit a felony, thefts, or act of violence. They're prohibited from being a TNC driver."

Tracy: "From being a… excuse me… from being a what?"

Zalewski: "For being an Uber driver or a rideshare driver, but one moment, Jil. And at that point, if you see that on their… on the person's background check, my sense is and it's safe to assume, not only is there a legal prohibition from them working there, but Uber and Lyft are hopefully going to have challenges placing that person into employment."

Tracy: "Is that in your Bill?"

Zalewski: "That they… that they have the ability to not hire the person?"

Tracy: "That the background check must be conducted and that those people that have… I think you said seven years felony conviction…"

Zalewski: "Yeah. That piece is in the Bill, correct."

Tracy: "Okay. Do you recall what part it's in?"

Zalewski: "I'm… Say that… What Section?"

Tracy: "Yes."

Zalewski: "It's on page 6, Jil, Section 15. The driver requirements."

Tracy: "Okay. Thank you."

Speaker Turner: "Representative Bost."

Bost: "Thank you, Mr. Speaker. If Representative Reboletti could be excused for the rest of the day, please."

Speaker Turner: "Thank you, Representative. Representative Andrade."

Andrade: "Thank you, Mr. Speaker. Will the Gentleman yield?"

Speaker Turner: "The Gentleman will yield."

Andrade: "Mike, I just want… I have a question. I called my insurance agent. And my insurance agent said that when they receive a phone call, they're telling the drivers that by their policy and their legal counselors that if the app is on, they are saying that their personal insurance is not covering them. Their insurance… that insurance company said, listen, we are not going to cover you. So, at that moment… what Representative Mautino was talking about, there is no coverage."

Zalewski: "That's not… that's not true. That's not true."

Andrade: "No. Well, the question I have is, does the insurance company have the right to say no, we're not… we're not

covering you? Can they say, listen, at that moment you had the app on. We are not going to cover you? Are we silent on that or are we mandating them that they have to cover them?"

Zalewski: "So, what we're saying is a ridesharing company's going to be allowed to do what's called a contingency in the policy. So, the driver's going to have to have their personal policy in place. If their personal policy doesn't cover the accident because of their activities as a commercial driver, Uber, or Lyft, or whomever, has this contingency in place whereby they will cover the accident, the victim of the accident. That's the way Chicago… the Chicago version did and we are stre… enhancing the Chicago version of insurance. We're a little less than California; we're a little more than Chicago."

Andrade: "The contingency. Does it have a dollar amount?"

Zalewski: "It's the same as what the driver would be required to have, which is 50 thousand per person for death and personal injury, a hundred thousand for death and personal injury per incident, and 25 thousand for property damage."

Andrade: "So, by market, are you… that saying that by market it might adjust itself?, Are we saying that basically we're going to end up… there's going to be a case and precedent's going to be set by law. When's there's a lawsuit and they say no, that person… we want a million dollars."

Zalewski: "No. I think what we're saying is eventually there's going to become a product on the market, insurance market, that Uber's going to decide is what cost prohibitive in this contingency that they have right now. And they're going to buy that and that way the driver's covered. That being said, when I told the Leader Mautino is the insurance companies

don't believe that's accurate. They think that we need this… we need to set the market ourselves and that's going to be an ongoing discussion."

Andrade: "Thank you."

Speaker Turner: "Representative Davidsmeyer."

Davidsmeyer: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "The Sponsor will yield."

Davidsmeyer: "We had… we had good discussion this morning in committee and I appreciate your work on this. I know it's been a long time… a lot of issues and things of that sort. So, my… my question is on that 25, 50, hundred thousand. Who is required to have that coverage? Is it the individual driver or is it the company or does it state who is required to have that? And if that coverage isn't there, who would be breaking the law?"

Zalewski: "So… so, by law the driver has to have in their individual insurance policy a little less than what is in our Bill. And I believe that Uber or Lyft will then have to cover it… what's articulated in the statute."

Davidsmeyer: "So, if my insurance… like the previous speaker said, if my insurance… my personal insurance said that I am not allowed to operate for-profit under my personal insurance, when I turn on the app, I'm operating for-profit, correct?"

Zalewski: "Correct."

Davidsmeyer: "So, that could possibly go away. And so, this Bill will require Uber, Lyft, whoever the rideshare person is, it would require them to cover the driver, correct?"

Zalewski: "Yes. They have the contingency in place to cover them when the app goes on."

Davidsmeyer: "Okay. So, it will be the company that is required to ensure that the driver is insured."

Zalewski: "Assuming the personal policy doesn't have this commercial rider on it, correct."

Davidsmeyer: "Okay. I still have a number of concerns about this. I think there's a major gap. I think we are somewhat picking winners and losers in an industry that provides the same service, so I think we need to continue to work on this. But I appreciate all that you've done. Thank you."

Zalewski: "Thank you, C.D."

Speaker Turner: "Leader Lang."

Lang: "Thank you, Mr. Speaker. I simply rise to support the Bill and congratulate the Sponsor on a substantial effort. Many of us preferred the original Bill. I heard Mr. Harris, particularly, talk about that. And I certainly preferred the original Bill, but this is a place of compromise. And I think this… this Bill does move the process forward and I appreciate the hard work of Mr. Zalewski. I would suggest an 'aye' vote."

Speaker Turner: "Representative Zalewski to close."

Zalewski: "Thank you, Mr. Speaker. Briefly, I'm told Sidecar and Lyft are neutral on the Bill. Again, we want to address some concerns going forward. The bankers have raised concerns about liens and notice to lienholders. We had an at length discussion about… about insurance. This is a good piece of legislation that gets a commercial ridesharing act on the books. It's important to enact it. And I ask for an 'aye' vote."

Speaker Turner: "The question is, 'Shall Senate Bill 2774 pass?' All in favor vote 'aye'; all opposed vote 'nay'. The voting

is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, please take the record. On a count of 105 voting 'yes', 7 voting 'no', 2 voting 'present', Senate Bill 2774, having received the Constitutional Majority, is hereby declared passed. Mr. Clerk."

Clerk Hollman: "Committee Reports. Representative Barbara Flynn Currie, Chairperson from the Committee on Rules reports the following committee action taken on December 03, 2014: recommends be adopted for the floor is Floor Amendment #7 to Senate Bill 636. Representative Barbara Flynn Currie, Chairperson from the Committee on Rules reports the following committee action taken on December 03, 2014: recommends be adopted is a Motion to Concur with Senate Amendments 1 and 2 to House Bill 3834."

Speaker Turner: "Representative Williams, for what reason do you seek recognition?"

Williams: "Thank you, Mr. Speaker. I just wanted to note that on Senate Bill 172, my intention was to vote 'yes'."

Speaker Turner: "The Journal will reflect your request. On page 5 of the Calendar, we have Senate Joint Resolution 42. Representative Chapa LaVia."

Chapa LaVia: "Thank you, Speaker and Members of the House. Senate Joint Resolution 42 is a Constitutional Convention Resolution. It was passed over from the Senate over here. And I'd be more than happy to take any questions on it. Thank you."

Speaker Turner: "On that, we have Representative Sandack."

Sandack: "Question the Sponsor."

Please state your point, Senator Hutchinson.

SENATOR HUTCHINSON:

After that historic vote we just took, I think it's a proper time for me to introduce to this Chamber, to all my colleagues on the Floor, a future member of the General Assembly possibly. This is little Miss Jianna Booth, the newest baby for Representative Jehan Gordon-Booth, and she came to say hello to the Senate before we leave for our holiday break. So just wanted you all to welcome Miss Jianna Booth to the Floor of the Senate.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Representative, welcome, and your beautiful baby as well. So nice of you to join us. Ladies and Gentlemen, up on the board, we have Senate Bill 2774. We're on the Order of Concurrence, House -- Senate Bills. And, Senator Muñoz, do you wish to proceed? Indicates that he would. Mr. Secretary, please read the motion.

SECRETARY ANDERSON:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 2774.

Signed by Senator Muñoz.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Muñoz.

SENATOR MUÑOZ:

Thank you, Mr. -- thank you, Mr. President, Ladies and Gentlemen of the Senate. The House Amendment 1 to Senate Bill 2774 creates the Transportation Network Providers Act. This legislation requires transportation networks to comply with two -- two separate automobile liability insurance requirements. One, from the time before and after a trip, the transportation network company must carry contingent liability insurance in the amount of

fifty thousand for death and personal injury per person, a hundred thousand for death and personal injury per incident, and twenty-five thousand for property damage. During the ride, the transportation network company driver must carry primary liability insurance in the amount of one million for death, personal injury, and property damage. Legislation also requires a transportation network company to conduct a local and national criminal background check on its drivers and prohibits a driver from operating a vehicle if he or she has been convicted of certain traffic or criminal violations. The bill that we had on the Floor this past spring, we had opposition from the different parties that were involved. Now the only opposition that we have on the bill is from the insurance industry. And for those who were in Exec Committee, they explained why they have opposition. Initially, when we first drafted the bill, they wanted a certain amount of coverage, and since we've changed this bill on this concurrence, it is less. That is the reasoning for it. And the only reason why we're moving this bill tonight in this Chamber on the concurrence is because three of the companies have finally reached an agreement on how we can proceed to move further on a trailer bill, and during that time, we will address the concerns of the insurance industry. I gave my word in committee and I give you my word on the Senate Floor. I look forward to working with all -- with everyone that have had some concerns or objections, as we've been doing for several months. I had -- got approached by the bankers. They might want to come and talk to us about adding some legislation. We're willing to work with everyone. But I think, tonight, the industry themselves have accomplished something, an agreement thus far that they were working together. And once we

can get the insurance industry to fully come on board -- right now there's someone -- the opposition, but I think we can get there in the trailer bill, and we definitely have to have the trailer bill. So I give you my word and I will attempt to answer any questions.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Thank you. Is there any discussion? Seeing none, Ladies and Gentlemen, the question is, shall the Senate concur in House Amendment 1 to Senate Bill 2774. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Secretary, take the record. On that question, there are 52 voting Aye, 2 voting Nay, 1 voting Present. Having received the required constitutional majority, the Senate does concur in House Amendment 1 to Senate Bill 2774, and the bill is declared passed. Senator Martinez, for what purpose do you rise?

SENATOR MARTINEZ:

For the point of personal privilege.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Please state your point. Ladies and Gentlemen, if you'll give Senator Martinez your attention, please. Please hold the visiting down. Senator Martinez.

SENATOR MARTINEZ:

Thank you very much. As you -- as many of you know, we lost a very dear member of the -- of the - I think this - of Springfield and the State of Illinois and a friend that people saw many times, you know, on the rail, in the building. He is someone that everybody went to for information, for laws that have passed maybe twenty/thirty years ago, and I'm talking about Mr. Bill Luking. As you know, on June -- June 12th, he passed away. And I --