No. 126605

IN THE SUPREME COURT OF ILLINOIS

JANE DOE,

Plaintiff-Appellant,

vs.

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. 1-19-1328
There heard on appeal from the Circuit Court of Cook County,
County Department, Law Division, No. 17 L 11335.
The Honorable Patricia O'Brien Sheahan, Judge Presiding

ILLINOIS TRIAL LAWYERS ASSOCIATION'S *AMICUS* BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT, JANE DOE

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JANE DOE'S AMICUS BRIEF

Relevant Statutory and Constitutional Provisions

625 ILCS 57/5 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.

625 ILCS 57/25 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 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.

Illinois Const., Art. IV, § 13

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.

Argument

I.

Section 25(e) of the Transportation Network Providers Act (TNPA), which states that ride sharing transportation services are not common carriers, is obviously inaccurate and absurd; it should be severed from the statute.

It should be beyond dispute that Lyft, and other ride sharing transportation services, are common carriers as that term is defined under Illinois law. Almost 100 years ago, in *Austin Bros. Transfer Co. v. Bloom,* 316 Ill. 435, 437-38 (1925), this Court defined "common carrier":

> A common carrier of passengers has been defined as 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, and accordingly jitney bus proprietors[1], owners of stage coaches, hacks and omnibuses have generally been held to be common carriers. This is so because in their business they serve all the public alike who apply to them for carriage, so long as they have room, and they are held common carriers regardless of the fact whether they operate in cities or from town to town or from city to city, so long as they maintain their status as public carriers, carrying all who apply and refusing none unless they have no room or for some other legal reason may refuse. [Citation.]

quoted approvingly in *Ace Ambulance & Oxygen Service Co. v. Illinois Commerce Comm'n*, 75 Ill. App. 3d 17, 21 (3d Dist. 1979).

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[1] Decades before Lyft came into being there were jitneys (named from a slang term for a nickel, the original fare), operating on the South Side of Chicago, much like buses, on set routes. Passengers hailed rides from jitney drivers on the street, and politicians allowed it for years, taking a share of the profits. (See Ron Grossman, "Before Uber there was jitney," Chicago Tribune, March 9, 2014; www.chicagotribune.com/news/ct-jitney-cab-flashback-0309-140309-story.html

More recently, in *Doe v. Rockdale School District No. 84*, 287 Ill. App. 3d 791, 794 (3d Dist. 1997), the Appellate Court again defined the term "common carrier":

> Longstanding authority in Illinois has held that a common carrier is "one who undertakes for the public to transport from place to place such persons or goods of such as choose to employ him for hire." *Beatrice Creamery Co. v. Fisher*, 291 Ill. App. 495, 499, 10 N.E.2d 220 (1937). *See also, Transformer Corp. of America v. Hinchcliff*, 279 Ill. App. 152 (1935); *Illinois Highway Transportation Co. v. Hantel*, 323 Ill. App. 364, 55 N.E.2d 710 (1944). 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. *Hantel*, 323 Ill. App. 364, 55 N.E.2d 710. Moreover, a common carrier may be liable for an unexcused refusal to carry all who apply. *Meyer v. Rozran*, 333 Ill. App. 301, 77 N.E.2d 454 (1948). 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. *Beatrice Creamery Co.*, 291 Ill. App. 495, 10 N.E.2d 220; *Rathbun v. Ocean Accident & Guarantee* Corp., 299 Ill. 562, 132 N.E. 754 (1921); *Long v. Illinois Power Co.*, 187 Ill. App. 3d 614, 543 N.E.2d 525, 135 Ill. Dec. 142 (1989).

cited approvingly in *Doe v. Sanchez*, 2016 IL App (2d) 150554, ¶ 11.

Common carriers are not required to own the vehicles that their drivers operate. *Jacobs v. Yellow Cab Affiliation, Inc.*, 2017 IL App (1st) 151107. And common carriers are not limited to trains, planes, buses and taxis. In *Smith v. Chicago Limousine Service, Inc.*, 109 Ill. App. 3d 755, 759 (1st Dist. 1982), the Appellate Court implicitly recognized that a limousine service was a common carrier. The Appellate Court has also recognized that a private motor coach is a common carrier. *Kerby v. Chicago Motor Coach Co.*, 28 Ill. App. 2d 259 (1st

Dist. 1960). Like ride sharing companies, both limousines and motor coaches undertake "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." *Austin Bros. Transfer Co. v. Bloom, supra.* at 437-38.

These definitions apply here with full force. They fit Lyft like a hand-stitched leather glove. Lyft and other ride sharing companies "undertake[] for the public to transport from place to place such persons or goods of such as choose to employ him for hire." They serve "all of the public alike." Indeed, even the majority of the Appellate Court recognized this reality when it stated: "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." *Doe v. Lyft*, Inc., 2020 IL App (1st) 191328, ¶ 21

But the Appellate Court did not consider that the Legislature's decree, in stating that ride sharing services, like Lyft, are not common carriers, was a fallacy. Nor did it consider the effect of such a fallacy in the scope of statutory construction.

The Legislature should not be allowed to simply say something that is obviously false is true and then expect that to be an enforceable law. Such an expectation is absurd. The reality of what ride sharing companies provide is a matter of fact, not a matter of opinion or subject to contorted construction.

Section 25(e) states:

> (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.

625 ILCS 57/25.

The majority below took this language as gospel, skipped right over the case law defining common carriers and held that "the Act . . . 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." *Doe v. Lyft, Inc.*, *supra.* at ¶ 30. If the Legislature had enacted a statute stating that it was exempting ride sharing companies from common carrier liability for a certain number of years because it wanted to encourage this new mode of common carriage, perhaps that would have been legitimate. But that is not what the Legislature said or did.

Simply stated, the Legislature said that a common carrier was not a common carrier. There is no rule of statutory construction that allows this absurd fallacy to stand.

This Court should deem Section 25(e) invalid and severe it from the rest of the statute. This would be proper under the rule of *People v. Mosley*, 2015 IL 115872, ¶ 30, where this Court reiterated that where a statute does not contain a severability clause, pursuant to the Statute on Statutes (5 ILCS 70/1.31), the Court must determine whether the valid and invalid portions of the statute are essentially and inseparably connected in substance, such that the legislature would not have

passed the valid portions of the statute absent the invalid portion. *See also, People v. Alexander*, 204 Ill. 2d 472, 484 (2003); *Fiorito v. Jones*, 39 Ill. 2d 531, 540 (1968).

II.

Section 25(e) is special legislation that should be deemed void under Article IV, Section 13 of the Illinois Constitution of 1970.

Illinois law is settled that the relationship of common carriers and passengers gives rise to a heightened duty of care that includes an affirmative duty to aid or protect against an unreasonable risk of physical harm from third parties, including one's agents or employees. *Doe v. Lyft, Inc.*, 2020 IL App (1st) 191328, ¶ 20. The Legislature's declaration that Lyft is not a common carrier, in Section 25(e) of the Transportation Network Providers Act (NTPA) (625 ILCS 57/1 *et seq.*), is special legislation that should be deemed unconstitutional under Illinois law.

The majority of the Appellate Court agreed with Lyft's position that ridesharing is a new technology, a new industry, a new venture when it expressly stated:

> 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.

Doe v. Lyft, Inc., 2020 IL App (1st) 191328, ¶ 41.

This was creative but wrong. There is nothing new and different about Lyft and other ride sharing companies that distinguishes it from other common carriers. Upstart companies claiming to be distinct from established common carriers like taxicabs is nothing new. As detailed above, they date back to the 1920's in Chicago, when there were jitneys operating on the south side of the City.

Section 25(e) is the essence of special legislation under Article 4, Section 13 of the Illinois Constitution of 1970. This special legislation should be deemed void and unconstitutional.

The rules for determining whether a statute is constitutional are settled. Statutes carry a strong presumption of constitutionality. *Moline School District No. 40 Board of Education v. Quinn*, 2016 IL 119704, ¶ 16. It is this Court's duty to uphold the constitutionality of a statute if reasonably possible. *Id.* The constitutionality of a statute is a question of law subject to *de novo* review. *Board of Education of Peoria School District No. 150 v. Peoria Federation of Support Staff, Security/Policeman's Benevolent & Protective Ass' Unit No. 114*, 2013 IL 114853, ¶ 41.

As the party alleging that Section 25(e) of the TNPA is unconstitutional, Jane Doe bears the burden of establishing the statute' constitutional infirmity. *Id.*

This she can do.

Article 4, Section 13 of the Illinois Constitution of 1970 states:

SECTION 13. SPECIAL LEGISLATION

> 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.

An annotated edition of the Illinois Constitution, prepared for legislators, explained the provision:

> Either of the following kinds of legislative actions may be held to violate the restriction on local or special laws:
>
> (1) Making a law apply to one or more particular persons or things named in the law.
>
> (2) Making a law apply to a described class of persons or things that is illogical and unfair. The latter violation overlaps with the prohibition on denying equal protection of the laws in Article 1, section 2, and is determined under the same standards.
>
> The General Assembly must sometimes name specific localities, universities, state contractors, and the like in laws appropriating money to them or otherwise making specific provisions for them. These laws are allowed because a general law cannot be made applicable to such particular subjects. But if the courts conclude that a special or local law is being used to give an unfair advantage to, or impose an unfair burden on, one or a small group of persons or things, the law will be held to violate this section.

1970 Illinois Constitution Annotated for Legislators (Fourth ed. 2005) http://www.ilga.gov/commission/lru/ILConstitution.pdf

This Court explained the purpose of this provision in *Best v. Taylor Mach. Works*, 179 Ill.2d 367, 391 (1997), when it stated that 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." In *Allen v. Woodfield Chevrolet, Inc.*, this Court elaborated:

> The special legislation clause expressly prohibits the General Assembly from conferring a special privilege or benefit upon a person or group of persons while excluding others similarly situated. *Best*, 179 Ill. 2d at 391. Although the legislature enjoys broad discretion in making statutory classifications, the legislature is prohibited, under the special legislation clause, from making arbitrary classifications which discriminate in favor of a select group without a sound and reasonable basis. *Jolliff*, 199 Ill. 2d at 519. Our analysis thus involves a dual inquiry. We must determine first whether the statutory amendments discriminate in favor of a select group and, if so, whether the classification created by the statutory amendments is arbitrary. *See Jolliff*, 199 Ill. 2d at 519. Where, as here, the statute under consideration does not affect a fundamental right or involve a suspect classification, it will be judged under the rational basis test. Under this test, the statute is constitutional if the legislative classification is rationally related to a legitimate state interest. *Unzicker v. Kraft Food Ingredients Corp.*, 203 Ill. 2d 64, 86, 270 Ill. Dec. 724, 783 N.E.2d 1024 (2002); *Jolliff*, 199 Ill. 2d at 520.

Allen v. Woodfield Chevrolet, Inc., 208 Ill. 2d 12, 21-22 (2003). *See also, Crusius v. Illinois Gaming Board*, 216 Ill. 2d 315, 325 (2005) (same); *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill. 2d 221, 235 (2005) (same); *Piccioli v.*

Board of Trustees of the Teachers' Retirement System, 2019 IL 122905, ¶¶ 17-18 (same).

By carving ride sharing services out of the definition of common carriers, the legislature has given an unfair advantage to Lyft and other TNCs in violation of Article 4, Section 13. Simultaneously, it has disadvantaged victims of sexual abuse who naively use ride sharing services. The "carve out" is purely arbitrary, without adequate justification. It improperly confers a benefit on a particular group without a reasonable basis and eliminating a benefit from another significant group. It does not promote the general welfare. In other words, it is not a rational statutory provision. It should be stricken down as unconstitutional.

The fact that riders cannot hail a Lyft on the street is a distinction without any significance. Riders cannot hail limousines, buses, trains or airplanes either.[2] Likewise, the fact that they use " technological platforms" does not justify exempting them. While there is no evidentiary record in this case, the Court can

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[2]In *Illinois Transportation Trade Assn v. City of Chicago*, 839 F.3d 594, 598 (7th Cir. 2016), the Seventh Circuit rejected an equal protection argument regarding ride sharing companies primarily based on the fact that passengers cannot hail a ride share ("Taxis but not TNPs are permitted to take on as passengers persons who hail them on the street. Rarely will the passenger have a prior relationship with the driver, and often not with the taxicab company either; and it makes sense therefore for the City to try to protect passengers by screening the taxi drivers to assure that they're competent and by imposing a uniform system of rates based on time or distance or both.") ITLA contends this analysis was faulty in 2016 and even more so today.

assume that other common carriers, such as trains and planes, also use "technological platforms." Finally, the majority of the Appellate Court's statement that "[t]his 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" *Doe v. Lyft, Inc.*, 2020 IL App (1st) 191328, ¶ 38, is both unsupported by any evidentiary record and offensive. People living "in areas that are not well served by traditional taxicabs" are just as entitled to safety provisions like people living on the Gold Coast.

Even if there ever was a rational basis for the Legislature's differentiating TNCs from taxis or for-hire vehicle services, when the statute was enacted, a point ITLA does not concede, there is no rational basis for it now, when ride sharing companies have decimated the taxi cab industry.[3] It is like giving Jeff Bezos an indefinite special status for opening a new kind of book store. If there ever was a reason for giving Amazon any breaks when the company began, there is no reason for it anymore. Similarly, even though the U.S. Constitution, as written, provided that "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective

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[3] *See, e.g.* https://www.nytimes.com/2014/11/28/upshot/under-pressure-from-uber-taxi-medallion-prices-are-plummeting.html "[In Chicago,] there have been only 11 medallion sales since July 1, compared with 147 during the same period last year." *See also*, news.wttw.com/2017/06/13/chicago-s-taxi-industry-crisis-can-it-be-saved "Since 2013, 774 taxi medallions have been surrendered, 578 have foreclosure notices and 107 have been foreclosed by their lenders."

Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons" (U.S. Const. Art. I, Sec. 2), no court would deem that provision applicable today. Other examples, showing the absurdity of determining the constitutionality of statutes or covenants based on the time of their enactment, abound, *e.g.* women voting; racial and ethnic limitations in the sale of real property. [4]

III.

Even if the Act is constitutional, Lyft must be held to the highest duty of care as it had a special relationship with Jane Doe.

Recognizing that the Court will avoid reaching a constitutional issue if there is a non-constitutional basis for ruling on an issue (*People v. Smith*, 365 Ill. App. 3d 356, 358 (1st Dist. 2006)), this Court should still rule that Lyft must be held to the highest duty of care as it has a special relationship with Jane Doe. Section 314A of the Restatement (Second) of Torts § 314A (1965) states:

> **§ 314A Special Relations Giving Rise to Duty to Aid or Protect**
>
> (1) A common carrier is under a duty to its passengers to take reasonable action
>
> (a) to protect them against unreasonable risk of physical harm, and

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[4] In *Shelby County v. Holder*, 570 U.S. 529, 550-51 (2013), the United States Supreme Court explained, that "a statute's 'current burdens' must be justified by 'current needs. . ."

> (b) to give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others.
>
> * * * *
>
> (4) One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a similar duty to the other.

Restatement (Second) of Torts § 314A, at 118 (1965).

This doctrine was explained fully in *Gress v. Lakhani Hospitality*, 2018 IL App (1st) 170380, ¶¶ 15-19, where the plaintiff was sexually assaulted in a hotel by a hotel employee:

> The duty to protect against unreasonable risk of harm extends to risks arising from acts of third persons, whether innocent, negligent, intentional, or even criminal. Restatement (Second) of Torts § 314A cmt. d, at 119 (1965). Likewise, before duty can attach, a defendant must know or should know of the unreasonable risk of injury. *Restatement (Second) of Torts* § 314A cmt. f, at 120 (1965). This is another way of saying that the defendant must know of the chance of injury or the possibility of harm. *See Black's Law Dictionary* (10th ed. 2014) (defining "risk"). . . . [T]he Restatement (Second) of Torts § 319 (1965) also states that when one actor (like the hotel) takes charge of a third person (like a hotel employee) "whom he knows or should know" would likely cause bodily harm to another (like Karla) if not controlled, that actor "is under a duty to exercise reasonable care to control the third person [like the employee] to prevent him from doing such harm."
>
> ¶ Courts have historically held that a hotel or common carrier, for example, must exercise the "highest degree of care," which we interpret simply as another way of expressing the existence of a special relationship. [Citations omitted.] These special relationships give rise to an affirmative duty to aid or protect another against an "unreasonable risk of physical harm." [Citation omitted.] Such duties are premised on a relationship between the parties that is

> independent of the specific situation which gave rise to the harm. Restatement (Second) of Torts § 314A cmt. b, at 119 (1965) (the "special relations between the parties *** create a special responsibility, and take the case out of the general rule"); [Citation omitted] 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.'" [Citations omitted.] . . .

Rule 314(A) of the Restatement (Second) of Torts applies here completely and directs the conclusion that Lyft owed Jane Doe the highest duty of care.

CONCLUSION

For all of the reasons stated above, *amicus* Illinois Trial Lawyers Association asks this Court to severe Section 25(e) from the statute, or, alternatively reverse the holding of the circuit court that Section 25(e) is constitutional, and to remand the matter to the circuit court for proceedings consistent with such a reversal.

Respectfully submitted,

By: /s/ Leslie J. Rosen

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 15 pages.

By: /s/ Leslie J. Rosen