No. 126605

IN THE
SUPREME COURT OF ILLINOIS

JANE DOE, Plaintiff-Appellant, v. LYFT, INC., ANGELO McCOY, 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, Illinois, County Department, Law Division, No. 17-L-11355 The Honorable Patricia O'Brien Sheahan, Judge Presiding.

BRIEF OF TECHNOLOGY NETWORK AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE LYFT, INC.

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INTEREST OF THE *AMICUS CURIAE*

Amicus curiae Technology Network ("TechNet"), files this brief in support of Defendant-Appellee Lyft, Inc. ("Lyft") and in favor of affirmance. TechNet is a national, bipartisan network of chief executive officers and senior executives of leading technology companies from across the nation. TechNet's objective is to promote the growth of the technology industry and to advance America's global leadership in innovation. TechNet's diverse membership includes dynamic American businesses, ranging from startups to the most iconic companies on the planet, and represents over four million employees and countless customers in the fields of information technology, e-commerce, advanced energy, cybersecurity, venture capital, and finance. A list of TechNet's members is available at http://technet.org/membership/members. Lyft is not a member of TechNet, and no one affiliated with Lyft is a member of TechNet's Executive Council or staff.

TechNet members include leaders in one of the fastest growing areas of the American economy, the "sharing" or "gig" economy. What companies in this sector generally have in common is that they have harnessed cutting edge technology to more efficiently facilitate the direct exchange of goods and services between service providers and consumers through multi-sided, virtual marketplaces. Policy makers throughout the nation have recognized the important role this new technology will play in the U.S. economy for years to come by carefully striving to strike a balance between the need to manage and

regulate their impacts with the objective of nurturing their continued growth and success.

One of the ways Illinois has sought to strike that balance is by enacting the Transportation Network Provider Act, 625 ILCS 57/1 *et seq*. Since the law went into effect in 2015, and notwithstanding the extensive attention to this part of the sharing economy in the public discourse, the Illinois General Assembly has carefully considered and seen fit to maintain the balance it struck when it first passed the Act. In fact, the General Assembly extended the Act on two occasions, each time with *unanimous* agreement in *both* houses of the General Assembly. *See* Pub. Act 101-660, § 5; Pub. Act 101-639, § 40. The unanimous decisions to maintain the Act included consideration of the specific provision that Plaintiff seeks to have either narrowly construed or struck down altogether, Section 25(e).

TechNet submits this brief as *amicus curiae* in support of Lyft, because the Plaintiff's argument in this appeal, if successful, would trammel the policymaking authority of the Illinois General Assembly and potentially chill economic growth that accompanies technological advancement. The logical extension of Plaintiff's argument is that, in Illinois, the legislature's regulation of emerging markets and areas of commerce in this age of rapid technological innovation should be narrowly constrained by the Special Legislation Clause of the Illinois Constitution. Plaintiff would have the courts, rather than the legislature, determine the optimal way to regulate new technology-based

businesses. But courts have traditionally avoided this type of policymaking role, and for good reason—it is the democratically accountable legislature that has the constitutional authority to make policy decisions about how to balance the regulation and protection of growing sectors of the state's economy.

SUMMARY OF THE ARGUMENT

On one issue, all parties can agree - the underlying facts of this case are appalling. Angelo McCoy is alleged to have committed a heinous criminal act, for which he is rightly awaiting trial in the Circuit Court of Cook County on felony charges that may well see him spend the rest of his life in prison. *See* People v. McCoy, No. 17-108525 (Cir. Ct. of Cook County.). There is no dispute that sexual assault has no place on any platform or in any community.

That, however, is not the focus of this appeal. To be clear, the outcome of this appeal will not determine whether criminal proceedings will progress or whether Plaintiff has viable avenues for civil remedies. Indeed, as cited supra, a criminal trial is imminent. There also is no dispute that Mr. McCoy may be held liable in tort if Plaintiff's allegations about his conduct are proven. *See* Compl., Counts IX-X. Furthermore, there is the potential that Lyft may be liable to Plaintiff for Lyft's own wrongdoing if she proves, as she alleges, either that Lyft acted negligently or that Lyft defrauded her with its representations as to its safety protocols. *See id.* at Counts I-II, V-VI. And there is no dispute that Sterling Talent Solutions may be liable if Plaintiff proves her allegations that Sterling Talent was negligent in the way it conducted its statutorily

mandated background check of Mr. McCoy. *See id.* at Count XI. Upholding the well-reasoned opinion of the Appellate Court will not deprive Plaintiff of her day(s) in court to pursue any of these potential avenues of criminal and civil justice.

But here, what Plaintiff seeks, is for this Court to create an additional route to recovery, in contravention of the legislature's statutory determination of how best to regulate a growing industry in Illinois. Practically speaking, Plaintiff seeks to have the Court overturn the exercise of legislative discretion and install a unique scheme of no-fault liability for the intentional criminal conduct of others that is highly atypical in American law. This brief elaborates on two points that are central to understanding why the legislature's policy judgment must prevail.

First, the General Assembly made a pragmatic, rational, policy judgment. It chose to attach legal significance to the undeniable differences that exist between traditional common carriers and Transportation Network Companies. The Court should defer to that policy decision. The sharing economy is an emerging sector that provides important benefits for workers, consumers, and the economy as a whole. By enacting the Transportation Network Providers Act, 625 ILCS 57/5 *et seq.*, the General Assembly sought to balance the need to regulate and manage this new and growing economic sector with the importance of ensuring that it flourishes in this State. The doctrine of

judicial restraint counsels against foreclosing this sort of reasoned, legislative policymaking.

Second, for the Court to strike down as unconstitutional Section 25(e) of the statute as written by the General Assembly would put Illinois out of step with jurisdictions across the nation. More than 20 state legislatures have expressly provided that Transportation Network Companies are not common carriers. To sustain a constitutional challenge on the theory Plaintiff is advancing—that distinguishing between Transportation Network Companies and the entities that were common carriers at common law is *arbitrary* and *irrational*—would place Illinois far outside the mainstream, as no court in any of those states has even entertained such a far reaching restraint on legislative discretion.

As it stands, Plaintiff's civil lawsuit will continue against both McCoy and Lyft, with or without the drastic intervention of the Court requested by Plaintiff. Indeed, Plaintiff may well be entitled to recovery in tort under the current regulatory scheme. But it simply cannot be said that the General Assembly lacked any rational justification for deciding that the particular characteristics of Transportation Network Companies make it inappropriate to differentiate them from common carriers. The Appellate Court correctly held that Plaintiff's claims are resolved by an Illinois statute and that the General Assembly had a legitimate policy objective when enacting that statute. The *amicus curiae* urges the Court to affirm.

ARGUMENT

Justice Holmes long ago observed that "common[]sense is opposed to making one man pay for another man's wrong, unless he has actually brought the wrong to pass …, that is to say, he has induced the immediate wrong-doer to do acts of which the wrong, or, at least, wrong, was the natural consequence under the circumstances known to the defendant." Oliver Wendell Holmes, Jr., Agency II, 5 Harv. L. Rev. 1, 14 (1891). That is why it has long been the rule that a principal can be vicariously liable for an agent's misconduct only if the agent acted within the scope of his or her duties at the time of the misconduct. Restatement (Second) of Agency § 219 (1958); *see* 1 Blackstone's Commentaries on the Laws of England, ch. 14, at 410; *see also Moir v. Hopkins*, 16 Ill. 313 (1855); *Tuller v. Voght*, 13 Ill. 277, 285 (1851).

A principal thus "is not responsible for acts which are clearly inappropriate to … the accomplishment of an authorized result." *Wright v. City of Danville*, 174 Ill. 2d 391, 405 (1996) (citing Restatement (Second) of Agency § 228(2) (1958)). This includes "intentional acts, which constitute legal wrongs, … which the master neither directed in fact, nor could have been supposed, from the nature of his employment, to have authorized or expected the servant to do." *Chicago, B. & Q.R. Co. v. Casey*, 9 Ill. App. 632, 639 (Ill. App. Ct. 1882) (quoting Cooley on Torts, 535). To use an illustration from Justice Story, "if the servant of a blacksmith in shoeing a horse negligently injures him, the master is responsible. But it will be otherwise, if he maliciously drives a nail into the horse's foot, in order to lame him." Story on Bailments, 266; *see Ellis v. Turner*,

8 T.R. 531–33 (1800) ("The defendants are responsible for the acts of their servant, in those things that respect his duty under them, though they are not answerable for his misconduct in those things that do not respect his duty to them; as if he, being master of the defendants' vessel, were to commit an assault upon a third person in the course of his voyage.").

Principals thus typically are not vicariously liable for the "serious crimes" of their agents. *See* Restatement (Second) of Agency § 231, Comment *a* ("[A] gardener using a small stick in an assault upon a trespassing child to exclude him from the premises may be found to be acting within the scope of employment; if, however, the gardener were to shoot the child for the same purpose, it would be difficult to find the act within the scope of employment."). Thus, in *Deloney v. Board of Education*, the court held that a school board was not vicariously liable for the sexual assault of a high school student by one of the board's truant officers. 281 Ill. App. 3d 775, 787 (1st Dist. 1996). Likewise, in *Hoover v. Univ. of Chi. Hosp.*, the court held that a hospital was not vicariously liable for a sexual assault by one of its doctors. 51 Ill. App. 3d 263, 267 (1st Dist. 1977). Other examples of this principle abound, in Illinois and elsewhere, many of them involving facts no less horrific than the ones presented here.[1]

[1] *E.g.*, *Starr v. Leininger*, 198 Ill. App. 3d 622, 624 (3rd Dist. 1990); *Webb by Harris v. Jewel Companies, Inc.*, 137 Ill. App. 3d 1004, 1006 (1st Dist. 1985); *Kehoe v. Marshall Field & Co.*, 141 Ill. App. 140, 146 (1st Dist. 1908), *aff'd*, 237 Ill. 470 (1908); *John R. v. Oakland Unified Sch. Dist.*, 769 P.2d 948 (Cal. 1989).

The few exceptions to this foundational principle of tort law are judicially created based on considerations and judicial constructs arrived at in the *absence* of legislative action. *See* Restatement (Second) of Torts § 314A (1958) (identifying four "special relationships": (1) common carrier-passenger; (2) innkeeper-guest; (3) business invitor-invitee; and (4) custodian-ward); *see also Foster v. President, etc., of Essex Bank*, 17 Mass. 479, 510 (1821) (explaining that if an agent does "a wrong, either fraudulently or feloniously, towards another, the master is no more answerable than any stranger. The cases of innholders, common carriers, and perhaps ship-masters or seamen, when goods are embezzled, are exceptions to the general rule, founded on public policy"). They also are narrowly construed. For instance:

- Because a common carrier is "[o]ne 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," this Court has held that a hired car service and driver is not a common carrier. *Rathbun v. Ocean Accident & Guarantee Corp.*, 299 Ill. 562, 567 (1921); *see Browne v. SCR Med. Transp. Servs., Inc.*, 356 Ill. App. 3d 642, 646 (1st Dist. 2005) (medical transport company not a "common carrier" because it could decline to serve anyone).

- Because an inn is "a house kept open publicly for the lodging and entertainment of travelers in general, for a reasonable consideration," this Court has held that a Pullman car is not an innkeeper, for it provides "no victuals or entertainment for the general public, but lodging alone, and only upon previous contract in the form of a ticket purchase." *Pullman Palace Car Co. v. Smith*, 73 Ill. 360, 362–63 (1874) (citing 2 Kent Commentaries on American Law, 595); *see Vigeant v. Nelson*, 140 Ill. App. 644, 646 (Ill. App. Ct. 1908) (person who contracted for one-week stay at hotel for fixed price ceased being guest and became a boarder).

Gutierrez v. Thorne, 537 A.2d 527 (Conn. App. Ct. 1988); *Bates v. United States*, 701 F.2d 737 (8th Cir. 1983).

- Because an invitee "is there for a purpose connected with the business in which the occupant is engaged," *Pauckner v. Wakem*, 231 Ill. 276, 278 (1907), another court held that is no invitor-invitee relationship if the premises are not open to the general public, *Hills v. Bridgeview Little League Ass'n*, 195 Ill. 2d 210, 249 (2000).

- Because a custodian-ward relationship exists where one "voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection," *Wells v. Endicott*, 2013 IL App (5th) 110570, ¶ 48 (quoting Restatement (Second) of Torts § 314A(4) (1965)), a court has held that a person who has a relationship with another person, but lacks custody, control, or any ability to dictate that person's activities is not a custodian, *Doe v. Big Bros. Big Sisters of Am.*, 359 Ill. App. 3d 684, 700-02 (1st Dist. 2005).

It was against the backdrop, and in consideration of, these long settled doctrinal rules that the General Assembly enacted the Transportation Network Provider Act, 625 ILCS 57/1 *et seq*. In doing so, rather than leave open for adjudication the question of whether the unquestionably unique characteristics of Transportation Network Companies distinguish them from traditional common carriers, the General Assembly chose to resolve the issue—they are not one and the same. 625 ILCS 57/25(e). This case thus comes down to Plaintiff's argument that this was an unconstitutional policy argument for the General Assembly to reach, because it is arbitrary and lacks any rational justification.[2] Plaintiff thus asks the Court to cast aside the judgment of elected

[2] Plaintiff also has argued that the Court should overturn a great number of its own precedents and hold that challenges under the Special Legislation Clause are subject to a more intense level of scrutiny than the rational basis standard this Court has traditionally deployed. Pl. Br. 37-42; *see, e.g.*, *Gen. Motors Corp. v. State Motor Vehicle Rev. Bd.*, 224 Ill. 2d 1, 30-31 (2007) ("A special legislation inquiry … will be judged under the deferential rational basis test, and the statute will be upheld if the legislative classification is rationally

Illinois policymakers and replace the statute as written with its own views of how this rapidly growing, technology-based sector of the economy should best be regulated. The *amicus curiae* urges the Court to decline that invitation.

I. Judicial Restraint Is Appropriate In Reviewing Legislation that Regulates Technology Companies.

The rise of technology companies has changed the way we live and the sharing economy has emerged as a critical growth sector in the global economy. The sharing economy offers significant benefits for workers and consumers alike, and effective regulation of the industry is of paramount importance—both to protect consumers and to facilitate continued economic growth. That is why the judiciary has long recognized the importance and propriety of deferring to the legislative and policy decisions of democratically elected representatives in the spheres of economic development and consumer protection. And where the legislation at issue involves the regulation of complex and rapidly evolving technologies and industries, as in this case, judicial restraint is even more crucial.

At base, Plaintiff seeks to depict the effect of Section 25(e) of the Transportation Network Providers Act as harmful to the public. This Court,

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related to a legitimate state interest."). Plaintiff, however, has supplied no basis for this Court to abandon *stare decisis*, particularly of a legal proposition so ingrained as the level of scrutiny applicable to special legislation challenges. *See generally People v. Bailey*, 2014 IL 115459, ¶ 11 ("Under the principle of stare decisis, we will not overturn longstanding precedent in the absence of a demonstration of 'good cause' or the identification of 'compelling reasons.'") (quotation omitted).

however, is the wrong forum for such contentions. The substance of Plaintiffs' arguments consists of policy concerns for the General Assembly, not legal arguments for the judiciary.

A. Judicial Deference to the Legislature Is a Well-Established and Foundational Principle in United States and Illinois Law.

It is rightly recognized that judicial review of legislative enactments is "the gravest and most delicate duty that [a court] is called on to perform." *Furman v. Georgia*, 408 U.S. 238, 431 (1972). In his dissent in *Lochner v. New York*, Justice Holmes wrote "I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law." 198 U.S. 45, 75 (1905) (Holmes, J., dissenting). Although Justice Holmes was in dissent in *Lochner*, his articulation of the role of the judiciary in reviewing legislative policy has ultimately carried the day. It has come to be widely accepted that "courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).[3]

This Court has embraced Justice Holmes's well-reasoned view of judicial review. It has emphasized that the Court does "not sit as a superlegislature to

[3] *Accord* James Bradley Thayer, Professor at Harvard Law School, Address Delivered at The Tribute of Massachusetts in Commemoration of the One Hundredth Anniversary of His Elevation to the Bench as Chief Justice of the Supreme Court of the United States, 69 (Marquis F. Dickinson ed., 1901) ("To set aside the acts of such a body, representing in its own field, which is the highest of all, the ultimate sovereign, should be a solemn, unusual, and painful act … The judiciary, today, in dealing with the acts of their coordinate legislators, owe to the country no greater duty than that of keeping their hands off these acts whenever it is possible to do so.").

weigh the wisdom of legislation nor to decide whether the policy it expresses offends the public welfare." *Hayden v. County of Ogle*, 101 Ill. 2d 413, 421 (1984) ((quoting *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 423 (1952)). And it has recognized that "[b]alancing . . . competing policy considerations is ultimately a matter for the legislature." *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 182 (2008); *see also Roselle Police Pension Bd. v. Vill. of Roselle*, 232 Ill. 2d 546, 557 (2009) ("We must interpret and apply statutes in the manner in which they are written and cannot rewrite them to make them consistent with the court's idea of orderliness and public policy.").

There is good reason for this approach. Judicial restraint and deference to the legislature show respect for the democratic process. Both the federal and Illinois constitutional systems task the legislative branch with making policy, which means the judiciary must review legislation "with appropriate deference to the Congress, a co-equal branch charged by the Constitution with the power to provide for the general Welfare of the United States and to enforce, by appropriate legislation." *Fullilove v. Klutznick*, 448 U.S. 448, 472 (1980) (internal quotation marks omitted); *see also Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill. 2d 218, 260 (2010) (Karmeier, J., concurring in part) ("For us to second-guess the wisdom of legislative determinations would, in fact, be prohibited by

article II, section 1, of the Illinois Constitution of 1970, which expressly states that '[n]o branch shall exercise powers properly belonging to another.'").[4]

Further, unlike the judicial process for decision-making, legislative policymaking is largely experimental. *See New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J.) ("It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments. . . ."). It is the legislature that is best positioned to investigate and develop complex and comprehensive policy, which is its express purpose in the constitutional system. A legislature "is far better equipped than the judiciary to 'amass and evaluate the vast amounts of data' bearing upon an issue [that is] complex and dynamic." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 665-66 (1994). "[T]here certainly is no reason to think judges or juries are better qualified . . . in making such decisions." *Youngberg v. Romeo*, 457 U.S. 307 (1982); *see also People v. Kohrig*, 113 Ill. 2d 384, 397 (1986) ("Recognizing the legislature's broad power to provide for the public health, welfare and safety, the courts are hesitant to second-guess a legislative determination that a law is desirable or necessary.").

That is not to question the importance of judicial review. But when improperly deployed, judicial review can result in burdensome interference

[4] Alexander M. Bickel, The Least Dangerous Branch: The Supreme Court at the Bar of Politics x (1962) ("[J]udicial review is a countermajoritarian practice.").

with this experimentation process and stifle growth and innovation—especially because, unlike legislative action, judicial precedent is not readily subject to reversal by the will of the people. Accordingly, courts have recognized that in the process of judicial review, there is a thumb on the scale in favor of democratically enacted laws. This deference helps ensure that public policy reflects the will of the majority. *See Kohrig*, 113 Ill. 2d at 396–97 ("It is well established that the legislatures, not the courts, have the primary role in our democratic society in deciding what the interests of the public require and in selecting the measures necessary to secure those interests."); *see also Rostker v. Goldberg*, 453 U.S. 57, 68 (1981) (stating that the Court must "not substitute our judgment of what is desirable for that of Congress"); *Trop v. Dulles*, 356 U.S. 86, 120 (1958) ("[I]t is not the business of this Court to pronounce policy. … That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorized the judges to sit in judgment on the wisdom of what Congress … do[es].").

B. Legislative Authority Is at Its Apex When the Legislation Concerns Sectors of the Economy

The importance of judicial deference to legislative policy choices is particularly critical when it comes to legislation that regulates or governs rapidly developing technologies and sectors of the economy. The emergence of the sharing economy over the last decade has significantly impacted the way Americans live. *See, e.g.*, ADP Research Institute, Illuminating the Shadow Workforce: Insights Into the Gig Workforce in Businesses (Feb. 2020),

https://www.adp.com/-/media/adp/resourcehub/pdf/adpri/illuminating-the-shadow-workforce-by-adp-research-institute.ashx. This segment of the economy will continue to grow in Illinois and across the nation, as technology companies operating in the sharing economy "expand the pools of possible matches of earners and customers and expand the range of tasks that are possible." McKinsey Global Institute, Independent Work: Choice, Necessity, and the Gig Economy at 66 (2016).

The rapid growth of the sharing economy undoubtedly calls for appropriate regulation, and state legislatures across the country must consider how to address concerns of safety, privacy, and competition, while fostering this continued growth and innovation. With respect to the rideshare industry in particular, the General Assembly provided a comprehensive framework in the Transportation Network Providers Act. The statute takes a number of steps to protect consumers. For example, Transportation Network Companies operating in Illinois must conduct background screenings of all providers who wish to use the platform, 625 ILCS 57/15, ensure that all providers have adequate automobile liability insurance, 625 ILCS 57/10, require providers to forswear the use of drugs and alcohol while using the platform, 625 ILCS 57/25, and mandate that the platform display the identifying information of a provider to consumers, 625 ILCS 57/30.

In the course of adopting these undeniably rational regulations, the General Assembly also acknowledged the distinctions between traditional

taxicabs and electronic applications that connect drivers and riders. With those differences in mind, the legislature concluded that the most equitable way to treat Transportation Network Companies in the tort system was not to equate them to common carriers. 625 ILCS 57/25(e).[5] This decision, reinforced by the General Assembly on multiple occasions, was not made in a vacuum, nor without weighty consideration. The Court should not disturb this legislative decision lightly. *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 806 (2011) ("And we should not hastily dismiss the judgment of legislators, who may be in a better position than we are to assess the implications of new technology."). "[I]t is difficult for judges to fashion lasting guidance when technologies are new and rapidly changing" and "[j]udicially created rules also lack necessary flexibility; they cannot change quickly and cannot test various regulatory approaches." Orin S. Kerr, The Fourth Amendment and New Technologies: Constitutional Myths and the Case for Caution, 102 Mich. L. Rev. 801, 858–59 (2004).

[5] As her lead argument, Plaintiff urges the Court to circumvent the General Assembly's judgment that Transportation Network Companies are not common carriers by judicially recognizing a new exception to the rule against vicarious liability for intentional criminal wrongs to the four established common law "special relationships." Pl. Br. 17-33. The Court should not make new law for three reasons. First, it will open the door to innumerable requests for the judiciary to recognize new "special relationships." Second, as the Appellate Court explained, such a holding "would strip the relevant language of Section 25(e) of all meaning." *Doe v. Lyft, Inc.*, 2020 IL App (1st) 191328, ¶ 28. Third, it ignores that common law courts recognized each of the existing special relationships *only* in the absence of contrary legislative action.

The U.S. Supreme Court has held that when it comes to policies designed to address a new and "complex problem with many hard questions and few easy answers, [the courts] do well to pay careful attention to how the other branches of Government have addressed the same problem." *Columbia Broad. Sys., Inc. v. Democratic Nat. Comm.*, 412 U.S. 94, 103 (1973). Indeed, deference to the legislature "has special significance in cases . . . involving . . . judgments concerning regulatory schemes of inherent complexity and assessments about the likely interaction of industries undergoing rapid economic and technological change. Though different in degree, the deference to Congress is in one respect akin to deference owed to administrative agencies because of their expertise." *Turner Broad. Sys., Inc.*, 520 U.S. at 196; *see also Columbia Broad. Sys., Inc.*, 412 U.S. at 102 ("The problems of regulation are rendered more difficult because the broadcast industry is dynamic in terms of technological change; solutions adequate a decade ago are not necessarily so now, and those acceptable today may well be outmoded 10 years hence."). Courts recognize that the legislature is in a better position than the judiciary to develop a comprehensive regulatory scheme to address this challenge. *Id.*

These well-established principles demonstrate the importance of deference in this case, which relates to the appropriate regulation of the rapidly evolving rideshare industry in Illinois. In enacting comprehensive legislation on the subject, the General Assembly chose to strike a balance between the need to protect consumers and manage the impact and

opportunity provided by this new technology, with the objective of nurturing its continued growth and success. *Illinois Transp. Trade Ass'n v. City of Chicago*, 839 F.3d 594, 599 (7th Cir. 2016) (holding that a legislative body may "chose[] the side of deregulation, and thus of competition" when it decides how to regulate entities and industries). "That is a legally permissible choice." *Id.* Because the legislature is the branch best-suited to addressing these complex and developing issues, this Court should exercise great deference to the General Assembly's reasoned policy making decisions at issue.

II. Judicial Intervention in the Legislature's Regulation of Transportation Network Companies Would Make Illinois an Outlier Compared to Other States.

Plaintiff's contentions are not well-suited for judicial review. They belong as part of a public policy debate in which elected officials may be held accountable for their policy decisions to the extent their constituents disagree. For this Court to hold, as Plaintiff proposes, that the General Assembly is constitutionally prohibited from reaching the policy judgment it reached would be at odds not only with this Court's precedent and foundational principles of judicial restraint, but would make Illinois an outlier with respect to these issues.

Illinois was far from the first state to pass comprehensive legislation regulating Transportation Network Companies that, as part of such a regime, distinguishes common carriers from Transportation Network Companies. In all, more than 20 states have reached the same policy judgment as the Illinois

General Assembly and outline affirmatively that Transportation Network Companies are not common carriers by a matter of law. *See, e.g.*, Miss. Code Ann. § 77-8-3; Fla. Stat. § 627.748; Alaska Stat. § 28.23.010; Colo. Stat. § 40-10.1-102; Tex. OCC § 2402.002; W. Va. Code § 17-29-2; Va. Stat. § 46.2-2000; Wy. Stat. § 31-20-110(b); Iowa Stat. § 321N.3; Mont. Admin. R. 38.3.104; Ala. Code § 32-7C-21; Idaho Code § 49-3704; Del. Code tit. 2 § 1902; Ind. Code § 8-2.1-19.1-2; La. Stat. § 48:2192; Mich. Comp. Laws § 257.2127; Mo. Stat. § 387.402; Utah Code § 13-51-103; Wis. Stat. § 194.01. This policy view represents the clear majority approach among the state legislatures that have addressed the issue.[6] And not one state mandates that TNCs are common carriers--either the state affirmatively indicates TNCs are not common carriers or is otherwise silent on the issue of common carrier.

What is more, and perhaps more importantly here, no state court has struck down—or even seriously questioned—a law passed by a state legislature to regulate Transportation Network Providers as lacking a rational basis. As the New York Court of Appeals recently acknowledged in a similar context, these types of modern liability questions are "best suited to legislative determination." *Matter of Vega*, 149 N.E.3d 401, 428–29 (N.Y. App. 2020). The few state courts that have had occasion to consider similar legislation thus have readily accepted it. For example, in one Texas case, a plaintiff brought a

[6] Maryland, for example, defines Transportation Network Companies as common carriers, Md. Code Pub. Util. § 1-101.

respondeat superior claim against a rideshare company after a driver suffered a medical incapacity that resulted in an accident. *Freyer, v. Lyft, Inc.*, No. DC-17-14517, 2019 WL 5697033 (Tex. Dist. July 25, 2019). The defendant moved for summary judgment, citing the Texas equivalent to Section 25(e), which similarly states that Transportation Network Companies "are not common carriers." *See* Tex. OCC. § 2402.002. The court granted the motion and dismissed the claim with prejudice, without questioning the applicability or constitutionality of the Texas statute. *Freyer*, 2019 WL 5697033, at *1.

No court, therefore, in any of the many jurisdictions to have drawn this distinction has taken the radical view that Plaintiff advocates here—that it is *irrational* for a legislature to draw the line that Illinois has drawn between Transportation Network Companies and common carriers. Instead, when asked to strike down state regulations of Transportation Network Companies on similar (if not materially identical) theories, courts across the nation have declined to intervene. *See, e.g.*, *Ill. Trans. Trade Ass'n v. City of Chi.*, 839 F.3d 594, 599 (7th Cir. 2016) (holding that there was a rational basis for government to distinguish between Transportation Network Companies and taxicabs); *Checker Cab Operators, Inc. v. Miami-Dade Cty.*, 899 F.3d 908, 922–24 (11th Cir. 2018) (same); *Progressive Credit Union v. City of N.Y.*, 889 F.3d 40, 49–51

(2d Cir. 2018) (same); *Newark Cab Ass'n v. City of Newark*, 901 F.3d 146, 156–60 (3d Cir. 2018) (same).[7]

In this respect, Justice Thomas offered instructive insights about how courts should approach legislative policy regulating new types of businesses and technologies, including those that bear a surface-level resemblance to traditional common carriers. *Biden v. Knight First Amend. Inst. at Columbia Univ.*, 141 S. Ct. 1220, 1226 (2021) (Thomas, J., concurring). In *Knight*, the Supreme Court held a claim that a digital social media platform had violated the First Amendment was moot. Concurring in the decision, Justice Thomas stated that the legislative process is the "principal means for regulating digital platforms," and that it was not the role of the courts to intervene. *Id.* Noting that "[t]he similarities between some digital platforms and common carriers . . . may give legislators strong arguments for similarly regulating digital platforms," Justice Thomas maintained that the legislature is well within its right to choose to "give[] digital platforms 'immunity from certain types of suits,'" even without imposing corresponding responsibilities. *Id.* Ultimately, he emphasized that "applying old doctrines to new digital platforms is rarely straightforward." *Id.*

[7] *See also Desoto CAB Co., Inc. v. Picker*, 228 F. Supp. 3d 950, 960 (N.D. Cal. 2017), *aff'd*, 714 Fed. App'x. 783 (9th Cir. 2018); *Boston Taxi Owners Ass'n, Inc. v. Baker*, CV 16-11922-NMG, 2017 WL 354010, at *6 (D. Mass. Jan. 24, 2017); *Gebresalassie v. Dist. of Columbia*, 170 F. Supp. 3d 52, 61–68 (D.D.C. 2016).

In the end, Plaintiff simply disagrees with the policy judgment reached not only by Illinois, but by the majority of states to have addressed this question. Whatever merit her policy views may have, however, that does not mean every one of the state legislatures to have disagreed with her on this issue lacked a rational basis for its judgment. For this Court to hold that such a view lacks any rational justification would be truly extraordinary. There is no basis for this Court to adopt such an anomalous result.

CONCLUSION

For the reasons set forth above, and in the Brief of Defendants-Appellees, the decision below should be affirmed.

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Respectfully Submitted,

TECHNOLOGY NETWORK

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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 22 pages.

Dated: October 15, 2021

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