No. 123853

IN THE
SUPREME COURT OF ILLINOIS

PROFESSIONAL TRANSPORTATION, INC., a foreign corporation, d/b/a PTI,	)	On Appeal from the Illinois Appellate Court, First Judicial District, No. 1-17-0075
Counter-Plaintiff/Appellee,	)	There on Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division, No. 12 CH 38582
v.	)	
MARY TERRY CARMICHAEL,	)	
Counter-Defendant/ Appellant *et al.*	)	The Honorable SOPHIA H. HALL, Judge Presiding.

(FULL CAPTION ON NEXT PAGE)

BRIEF OF INTERVENOR-APPELLANT ILLINOIS SECRETARY OF STATE JESSE WHITE

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No. 123853

IN THE
SUPREME COURT OF ILLINOIS

MARY TERRY CARMICHAEL, Plaintiff-Appellant, v. PROFESSIONAL TRANSPORTATION, INC., a foreign corporation, d/b/a PTI, Defendant-Appellee, and ACE AMERICAN INSURANCE CO., a foreign corporation, and UNION PACIFIC RAILROAD COMPANY, a foreign corporation, Defendants.	)	On Appeal from the Illinois Appellate Court, First Judicial District, No. 1-17-0075
PROFESSIONAL TRANSPORTATION, INC., a foreign corporation, d/b/a PTI; Counter-Plaintiff/Appellee, v. MARY TERRY CARMICHAEL, Counter-Defendant/Appellant, and JESSE WHITE, ILLINOIS SECRETARY OF STATE, Intervenor-Appellant.	)	There on Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division, No. 12 CH 38582 The Honorable SOPHIA H. HALL, Judge Presiding.

POINTS AND AUTHORITIES

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NATURE OF THE CASE

This action concerns the constitutionality of a provision of the Illinois Vehicle Code that requires companies known as contract carriers to obtain additional liability insurance when they transport the employees of entities that hire them for that purpose. The provision at issue is section 8-101(c) of the Code, 625 ILCS 5/8-101(c) (2016),[1] which specifies that the affected contract carriers are those that use vehicles "designed to carry 15 or fewer passengers." These contract carriers must acquire underinsured and uninsured motorist coverage "in a total amount of not less than $250,000 per passenger." Professional Transportation, Inc. ("PTI"), a contract carrier that was transporting Mary Terry Carmichael when an accident injured her, has brought a counterclaim challenging the provision on the grounds that it violates the due process, special legislation, and equal protection guarantees of the United States and Illinois Constitutions. The issues presented are on the pleadings.

[1] This brief cites to the current version of the Code, which has not materially changed since the time of the relevant events.

ISSUES PRESENTED FOR REVIEW

1. Whether this Court lacks jurisdiction to hear this appeal because Carmichael's voluntary dismissal of her remaining claim did not make the circuit court's denial of PTI's motion to dismiss the action a final order.

2. If this Court has jurisdiction to hear this appeal, whether it should not reach the constitutional issues presented either because (a) Carmichael lacked a private right of action under section 8-101(c) of the Code, which makes it unnecessary for this Court to consider the constitutional issues presented by PTI's counterclaim; or (b) PTI lacked standing to bring a declaratory judgment action, given that it has not been prosecuted under section 8-101(c) and has faced no threat of criminal action.

3. Provided that jurisdiction exists and Carmichael had a private right of action and PTI had standing, whether section 8-101(c) of the Code was not vague in violation of the due process guarantees of the federal and state constitutions.

4. If jurisdiction exists and Carmichael had a private right of action and PTI had standing, whether section 8-101(c) of the Code did not violate either the constitutional prohibition on special legislation or the equal protection clause.

JURISDICTION

This Court lacks jurisdiction to hear this appeal because Carmichael's voluntary dismissal of her remaining claim did not make the circuit court's denial of PTI's motion to dismiss the action a final order. (*See* section I, below).

STATEMENT OF FACTS

The parties

Carmichael is a resident of Calumet City, Illinois. (C3). Her employer, Union Pacific, is a Nebraska corporation engaged in interstate commerce as a common carrier serving the railroad business. (*Id.*). PTI, an Indiana corporation, is a common carrier that contracts with Union Pacific to provide transportation services for Union Pacific employees within Illinois. (C4). ACE American Insurance has its principal place of business in Pennsylvania and transacts business in Illinois. (*Id.*). The Illinois Secretary of State administers the Illinois Vehicle Code.

Carmichael's accident and lawsuit — November 2010

Carmichael was injured in a vehicular accident at the intersection of Roosevelt Road and Blue Island Avenue in Chicago, Illinois, in November 2010. (C4, C336). She was traveling in a six-passenger vehicle operated by PTI to transport Union Pacific employees during business hours. (C337). In October 2012, she filed a three-count, civil action in the circuit court against Union Pacific, PTI, and ACE American Insurance. (C3 (A18)). In count I,

Carmichael sought a declaratory judgment against PTI finding that it was required to maintain at least $250,000 per passenger for underinsured and uninsured motor vehicle coverage pursuant to section 8-101(c) of the Code. (C4-5 (A19-20)). Further, Carmichael claimed that PTI failed to follow its statutory duty to file with the Secretary proof of financial responsibility in the amount of at least $250,000. (C5 (A20)). Count II sought a declaratory judgment against Union Pacific determining that it was required to pay certain accident benefits to Carmichael to reimburse her for the cost of medical care arising from the accident. (C6-7 (A21-22)). Count III alleged breach of contract against ACE American Insurance and sought a declaratory judgment. (C8 (A23)).

PTI filed its answer and affirmative defenses in April 2013. (C65, C70). A few months later, ACE American Insurance filed its answer and affirmative defenses, including the claim that Carmichael lacked a private right of action under section 8-101(c) of the Code. (C94, C103). In a related, prior lawsuit, Carmichael sued PTI, Union Pacific, the driver of the second vehicle in the accident, and others ("11 L 9679 case"). (C165 (A61)).

PTI's counterclaim and the State's motion to dismiss — October-December 2013

In this case, PTI filed an amended answer, affirmative defenses, and counterclaim against the Secretary and Illinois Attorney General in October

2013.[2] (C125 (A29)). It reasserted its prior affirmative defenses to count I of Carmichael's complaint, claiming that section 8-101(c) of the Code violated the special legislation, equal protection, due process, and commerce clauses of the federal and state constitutions. (C131 (A35)). PTI further alleged in its counterclaim that a related penal statute suffered from these constitutional defects. (C134-39 (A38-43); *see* 625 ILCS 5/8-116 (2016).

A few weeks later, the State filed a motion to dismiss PTI's counterclaim pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure, arguing both that it was procedurally improper and failed on the merits. (C236). PTI's claims against the State were barred by sovereign immunity, the State argued, and PTI's allegations against the Attorney General were improper because the Attorney General is not responsible for administering the provisions at issue. (C238-39). In addition, the State explained that PTI's counterclaim failed on the merits. (C239-48). Finally, the State argued that the court should decide PTI's constitutional claims before it resolved whether section 5/8-101(c) of the Code created a private right of action enabling Carmichael to assert her claims against PTI and the co-defendants. (C248). The State noted that if PTI were correct that Carmichael

[2] PTI alone brought the counterclaim. For much of the litigation, Union Pacific and PTI acted jointly. Eventually, the circuit court dismissed Union Pacific. (C1026). For efficiency, this brief refers to PTI as the principal defendant.

could not maintain her cause of action, then the court should dismiss her claim, rendering moot PTI's constitutionally based counterclaims. (*Id.*).

PTI filed a memorandum in response to the State's motion to dismiss conceding that PTI should be allowed to amend the caption of the counterclaim to name the Secretary and Attorney General as counter-defendants, replacing the State of Illinois. (C308, C311-12). With its memorandum, PTI filed the affidavit of Lowell Woods, its Risk Manager. (C336 (A131)). Woods testified that the vehicle carrying Carmichael during the November 2010 accident was a 2007 Chevrolet Uplander LS van, which was "designed to seat no more than seven (7) occupants, including the driver." (C337 (A132)).

In addition, PTI filed the affidavit of Robert Teavault, its Executive Vice President of Risk Management and Strategic Planning. (C343 (A133)). He noted that PTI's "fleet of vehicles [then] based in Illinois consist[ed] entirely of 156 vans, and each of them" — similar to the vehicle that Carmichael was injured in — "provid[ed] seating for six (6) passengers and a driver." (C344 (A134)). At the time of the accident, PTI had a policy with ACE American Insurance that provided liability coverage for $5,000,000. (*Id.*). Further, PTI carried underinsured and uninsured motorist coverage in the amount of $20,000 per person and $40,000 per occurrence. (*Id.*). Following the accident, Teavault inquired about increasing PTI's underinsured and uninsured motorist coverage to $250,000 per passenger for each vehicle that it operated.

(*Id.*). He estimated that this additional coverage would increase PTI's annual auto insurance costs by $580 per vehicle. (C344-45 (A134-35)).

Further circuit court proceedings — February-November 2014

In February 2014, the circuit court ordered PTI to restyle the caption of its counterclaim to name the Secretary and Attorney General as counter-defendants. (C351). The Secretary replied to PTI's response to his motion to dismiss, arguing among other points that the Attorney General was not a proper defendant. (C361).

In April 2014, the circuit court indicated that it would prefer to defer the question of the insurance provision's constitutionality until a later date. (C373). It ordered the defendants to file any motions to dismiss Carmichael's complaint on nonconstitutional grounds and directed PTI to amend its counterclaim to name only the Secretary. (*Id.*; *see also* C390). Soon thereafter, PTI filed a third amended answer, affirmative defenses, and counterclaim against the Secretary, with PTI's allegations largely reflecting its earlier filing. (C392). Additionally, PTI filed a motion to dismiss count I of Carmichael's complaint. (SR8).[3]

A few weeks later, ACE American Insurance moved to dismiss Carmichael's claims, arguing that nothing in section 8-101 of the Code

[3] "SR" designates citations to the supplemental record.

required the insurer to furnish PTI with $250,000 of underinsured and uninsured motorist coverage. (C483-84).

PTI filed a reply in support of its motion to dismiss Carmichael's complaint, arguing that she had no implied cause of action against PTI under section 8-101(c), regardless of whether it provides a private right of action. (C530, C532). And PTI argued that Carmichael had other "ample remedies" without the right to sue under section 8-101(c). (C535). Pursuant to an order directing the parties to file additional briefing, PTI filed a supplemental memorandum in October 2014 (C572) reasserting its constitutional claims and arguing that the record established "either that 5/8-101(c) does not apply to PTI's 6 passenger vehicles or that it is unconstitutional as alleged in PTI's Counterclaim" (C585).

The Secretary responded a few weeks later, arguing that (1) PTI could not assert special legislation and equal protection claims because there was a rational basis for the insurance requirement in section 8-101(c) of the Code; (2) the provision is not unconstitutionally vague; (3) PTI failed to state a commerce clause claim; and (4) the court should not decide the constitutionality of the provision until ruling on either (a) PTI's contention that the insurance provision does not apply to its vehicular operations, or (b) PTI's affirmative defense to Carmichael's complaint contending that the provision includes no private right of action. (C787).

Circuit court decision granting the Secretary's motion to dismiss PTI's counterclaim — January 2015

The circuit court granted the Secretary's motion to dismiss PTI's counterclaim on January 30, 2015. (C801 (A1)). In a memorandum decision dated the same day, the court held that section 8-101(c) of the Code did not violate PTI's due process rights because it is not unconstitutionally vague. (C803 (A3)). The court, however, did not consider Carmichael's claims against PTI and the other co-defendants, including whether Carmichael had a private right of action to proceed against those parties.

In addressing PTI's vagueness arguments (C803-05 A3-A5)), the court determined that there was no vagueness inherent in the statutory phrase "a vehicle designed to carry 15 or fewer passengers" (C804 (A4)). Such a vehicle, the court determined, included ones "designed to carry 15, or any number fewer than 15 passengers," encompassing a range of other automobiles, including both 15-passenger and 6-passenger vans, or any other vehicle "so long as its passenger capacity is not more than 15." (*Id.*). Consequently, the provision did not violate due process because it separated lawful conduct from unlawful acts, a distinction that diminished the chance of inconsistent law enforcement. (*Id.*).

Next, the court found no due process violation in the statutory provision regarding "[coverage] in a total amount of not less than $250,000 per passenger." (C805 (A5)). Rejecting PTI's argument that the phrase was constitutionally flawed because it does not clarify whether the coverage limit

applied to the design capacity of a vehicle (*i.e.*, up to 15 passengers) or the actual number of people in a vehicle at the time of an accident, the court concluded that carriers must maintain coverage for the maximum number of passengers capable of riding in a vehicle, further concluding that the language is not vague. (*Id.*).

The court then addressed PTI's claims that section 8-101(c) of the Code violated the equal protection and special legislation clauses, observing that the analysis was identical under both theories and that the standard was the same regardless of whether a federal or state constitutional claim was at stake. (C805 (A5)). The court concluded that the State identified "a conceivable rational basis" because the law requires contract carriers who transport employees to purchase higher levels of underinsured and uninsured motorist coverage than other employers and transporters. (C806 (A6)). Further, "[s]uch employees are being transported as part of their job, and have no choice in their employer's selection of contract carriers." (*Id.*). Given that lack of employee choice on how to travel to work, the Illinois General Assembly sought to protect them, a sufficiently rational basis for the provision. (*Id.*).

Beyond that, the court rejected PTI's contention that there was no rational basis to apply the statute to employers like PTI that transport workers in six-passenger vehicles. (*Id.*). Noting the State's citation of a study showing that some vans, including 15-passenger ones, show a higher level of dangerousness than other vehicles, the court concluded that the statute had a

rational basis "in requiring contract carriers" like PTI "to carry enhanced insurance coverage." (C807 (A7)). The court explained that the State's information concerned the dangerousness of "15 seater vans, but not . . . 6-seater vans," which it observed are vehicles included in the coverage requirement of section 8-101(c). (*Id.*). Although the State did not address any safety issues with those smaller vehicles, the court concluded that the statutory provision had a rational basis in its application to a variety of differently sized vehicles, requiring contract carriers of employees like PTI "to carry enhanced insurance coverage." (*Id.*).[4]

Post-decision proceedings — February 2015-December 2016

Following the circuit court's decision on PTI's counterclaims, PTI filed its fourth amended answer, affirmative defenses, and counterclaim, in response to Carmichael's complaint. (C821 (A44)). In that filing, PTI stated that the circuit court dismissed the 11 L 9679 action with prejudice on the ground that PTI did not contribute to causing the vehicular accident that injured Carmichael. (C823).

In April 2015, in this case, the circuit court granted ACE American Insurance's motion to dismiss count III of the complaint with prejudice. (C929, C930). In doing so, the court noted that it did not address ACE

[4] The circuit court also determined that the statute did not violate the Commerce Clause of the United States Constitution. (*See* C807-08 (A7-8)); U.S. Const. art. I, § 8. PTI does not challenge that part of the court's decision before this Court.

American Insurance's argument that section 8-101(c) of the Code created no private right of action. (C934).

A few weeks later, PTI filed a renewed motion to dismiss count I of the complaint, re-emphasizing the lack of a private right of action in section 8-101(c). (C943). The court denied that motion on July 24, 2015, and further determined that section 8-101(c) created an implied private right of action. (C1039 (A16)). Soon after that, PTI filed a motion alternatively seeking reconsideration or Ill. Sup. Ct. R. 308 certification. (C1040, C1092). In November 2015, the circuit court denied PTI's motion for reconsideration but granted certification under Rule 308. (C1125 (A17)). Several weeks later, the Appellate Court denied PTI's petition for leave to appeal under Rule 308. (C1173 (A136)); *see also* C1172, 1175).

On December 13, 2016, the court ordered the matter dismissed without prejudice based on Carmichael's motion to voluntarily her claims against PTI. (C1176 (A139)).

On January 6, 2017, PTI filed a notice of appeal, seeking review of the court's January 30, 2015 decision dismissing its counterclaim. (C1177 (A140)). Carmichael filed her own notice of appeal on January 11, 2017, seeking review of the circuit court's order granting PTI's motion to dismiss count III of the complaint. (C1187).[5] On January 26, 2017, Carmichael refiled her underlying

[5] That appeal (No. 1-17-0173) was consolidated with this appeal, but Carmichael later moved to dismiss her appeal against ACE American Insurance. (A162-64).

declaratory judgment action against PTI but obtained a stay of the matter pending disposition of this appeal. (A161).

Further proceedings — January 2015-February 2019

In June 2018, the Appellate Court issued an opinion affirming the judgment of the circuit court. *Carmichael,* 2018 IL App (1st) 170075. The Appellate Court held that section 8-101(c) of the Code does not "give rise to a private right of action," which made PTI's counterclaim moot and obviated the need for the Court to resolve the constitutional questions brought by PTI. *Id.* at ¶¶ 2, 14, 24. One Justice issued a special concurrence emphasizing that "[t]he whole reason for [uninsured and underinsured motorist insurance] was to take care of expenses of the victims of vehicle crashes." *Id.* at ¶ 27. She urged the General Assembly to address "a gaping hole in the system of justice" that leaves plaintiffs like Carmichael unable to vindicate their rights. *Id.*

After Carmichael filed a petition for leave to review in July 2018, this Court granted the petition in late September 2018. The Secretary sought to intervene the next month, but on the objection of PTI this Court determined that such intervention was premature and would depend on whether PTI's brief raised constitutional questions or sought cross-relief. PTI's brief, filed in February 2019, did seek cross-relief and challenged the constitutionality of section 8-101(c). Soon after, the Secretary filed an unopposed motion for leave to intervene, which this Court granted in March 2019, along with an order allowing the Secretary to file a brief up to 15,000 words.

ARGUMENT

I. This Court lacks jurisdiction to hear this appeal.

This Court has no jurisdiction over this matter for two reasons. First, it is unsettled whether an immediate appeal of PTI's dismissed counterclaim from the circuit court to the Appellate Court was possible once Carmichael voluntarily dismissed her remaining count I. Second, even if an appeal from that order on the counterclaim were proper, the issue asserted by PTI in the Appellate Court — whether Carmichael had a private right of action — was the subject of a nonfinal denial of a motion to dismiss. For either reason, this Court should dismiss this appeal and conclude that the petition for leave to appeal was improvidently granted. *See People v. Vara*, 2018 IL 121823, ¶ 1 (lack of jurisdiction compelled dismissal of appeal); *Phelps v. Elgin, J. & E. Ry. Co.*, 28 Ill. 2d 275, 279 (1963) (concluding that petition for leave to appeal was improvidently granted when nonfinal order was before Court). In addition, this Court should vacate the Appellate Court's opinion. *See Carle Found. v. Cunningham Twp.*, 2017 IL 120427, ¶ 35 (vacating appellate court decision due to lack of jurisdiction and remanding to circuit court).

A. Factual background

Carmichael filed a three-count civil action in the circuit court against PTI, Union Pacific, and ACE American Insurance. (C3 (A18)). In count I, she sought a declaratory judgment regarding PTI's duties under section 8-101(c) of the Code. (C4 (A19)). The circuit court ultimately dismissed counts II and III,

which alleged claims against Union Pacific and ACE American Insurance (C6-12 (A21-27)) with prejudice (C929-30, C1026).

Before the dismissal of counts II and III, PTI filed an amended answer, affirmative defenses, and a counterclaim. (C125 (A29), C821). Among its affirmative defenses, PTI asserted that the Code did not afford Carmichael a private right of action. (C132-33, C827-29). It also brought a counterclaim against Carmichael and two state constitutional officers, alleging constitutional challenges to section 8-101(c) of the Code. (C134-39, C830-35).

The Secretary of State and the Attorney General, as counter-defendants, moved to dismiss PTI's counterclaim. (C234). The circuit court granted the motion on January 30, 2015. (C801). The court did not consider Carmichael's count I, against PTI.

PTI thereafter filed a motion to dismiss count I, asserting its affirmative defense that Carmichael did not have a private right of action under section 8-101(c). (C943). The circuit court denied that motion on July 24, 2015, determining that section 8-101(c) created an implied private right of action. (C1039 (A16)). Then the Appellate Court denied PTI's petition for leave to appeal that order under Rule 308. (C1173; *see also* C1172, 1175).

Trial was set to begin on Carmichael's claim against PTI on December 13, 2016. (C1171). On that day, however, the court ordered the matter dismissed without prejudice based on Carmichael's motion to voluntarily

dismiss count I pursuant to section 2-1009. (C1176); *see also* 735 ILCS 5/2-1009 (2016).

On January 6, 2017, PTI filed a notice of appeal, seeking review of the circuit court's January 30, 2015 order dismissing its counterclaim. (C1177). Carmichael filed her own notice of appeal on January 11, 2017, seeking review of the circuit court's order granting ACE American Insurance's motion to dismiss count III of the complaint. (C1187).[6] On January 26, 2017, Carmichael refiled her action against PTI (*i.e.*, count I from the prior suit) but moved to stay the matter pending disposition of this appeal, a request that the circuit court granted. (A161).

B. The dismissal of PTI's counterclaim was not final and appealable.

PTI's failure to obtain Rule 304(a) language from the circuit court's decision granting the Secretary's motion to dismiss PTI's counterclaim deprives this Court of jurisdiction. In the Appellate Court, PTI argued that it was not required to obtain Ill. Sup. Ct. R. 304(a) language from the trial court — an "express written finding that there is no just reason for delaying . . . appeal" — to appeal the dismissal of its counterclaim. (PTI App. Reply Br. at 1

[6] That appeal (No. 1-17-0173) was consolidated with this appeal, but Carmichael moved to dismiss her appeal against ACE American Insurance in May 2017. (A162-64).

(2018 WL 4901282, at *1));[7] *see also* Ill. Sup. Ct. R. 304(a). In support, it argued that "[i]t is well settled that final orders entered in a case become appealable following a voluntary dismissal." (*Id.*) (citing *Dubina v. Mesirow Realty Dev., Inc.*, 178 Ill. 2d 496, 503 (1997)). Noting that Carmichael had voluntarily dismissed her remaining count I, PTI asserted that Rule 304(a) language was unnecessary. (PTI App. Reply Br. at 1).

"A voluntary dismissal pursuant to section 2-1009 terminates the entire action and renders immediately appealable all final orders entered therein that were not previously appealable." *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 39. But PTI has not demonstrated that *Richter* applies to an involuntarily dismissed counterclaim when the corresponding claim has been voluntarily dismissed. Although this issue appears to be one of first impression in this Court, case law and the rationale behind Rule 304(a) support a finding that Rule 304(a) language should be obtained in such cases.

Such language is warranted because "when a trial court dismisses a counterclaim without including Rule 304(a) language, it has no jurisdiction to review that finding." *N. Cmty. Bank v. 17011 S. Park Ave., LLC*, 2015 IL App (1st) 133672, ¶ 26 (citing *Eychaner v. Gross*, 321 Ill. App. 3d 759, 783 (1st Dist. 2001), *rev'd on other grounds*, 202 Ill. 2d 228 (2002)). The purpose behind Rule 304(a) is to "discourage piecemeal appeals in the absence of a just reason

[7] Pending before this Court is the Secretary's request pursuant to Ill. Sup. Ct. R. 318(c) for the transmission of the Appellate Court briefs to this Court.

and to remove uncertainty which exists when a final judgment is entered on fewer than all matters in controversy." 2015 IL App (1st) 133672, ¶ 26 (citing *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 465 (1990)).

Here, Carmichael asks this court to consider its counterclaim to a claim that is pending in a separate action. (PTI Br. at 34-54, A161). But it provides no rationale for why an appeal should be allowed from its dismissed counterclaim when the corresponding claim remains pending. And the rationale for Rule 304(a), to avoid piecemeal consideration of a claim and a related counterclaim in separate actions, requires a Rule 304(a) finding in this case. *See N. Cmty. Bank, LLC*, 2015 IL App (1st) 133672, ¶ 26.

C. Alternatively, the denial of PTI's motion to dismiss was not final and appealable.

Even if the dismissal of a counterclaim is "final in nature" and made PTI's constitutional question immediately appealable under *Richter*, Carmichael's right to bring suit — the only issue reached by the Appellate Court and the basis for Carmichael's PLA — was not final and appealable. Although an order granting a plaintiff's motion for voluntary dismissal is final and appealable, such an order does not render appealable prior nonfinal orders. *See, e.g., Bauman v. Patterson*, 2018 IL App (4th) 170169, ¶ 34 ("[A] voluntary dismissal that disposes of all remaining claims in the case makes appealable only those orders preceding the voluntary dismissal that were 'final in nature.'") (citing *Dubina v. Mesirow Realty Dev., Inc.*, 178 Ill. 2d 496, 503

(1997)); *cf. Resurgence Fin., LLC v. Kelly*, 376 Ill. App. 3d 60, 62 (2d Dist. 2007) (holding that denial of summary judgment preceding voluntary dismissal was neither a final judgment, nor a "procedural step" to the order of voluntary dismissal). And an order denying a motion to dismiss is not a final order. *See, e.g., Saddle Signs, Inc. v. Adrian*, 272 Ill. App. 3d 132, 135, 139-40 (3d Dist. 1995) ("[T]he denial of a motion to dismiss is not a final and appealable judgement.").

The July 2015 order denying PTI's motion to dismiss count I was not a final order. And it was not rendered appealable by Carmichael's voluntary dismissal of count I some 18 months later. Indeed, in its opening brief in the Appellate Court, PTI conceded that the circuit court's denial of its motion to dismiss Carmichael's count I was not final. (PTI App. Br. at 16 (2017 WL 10397986, at *16)). Yet PTI asserted that the Appellate Court nevertheless should consider PTI's basis for that motion — that Carmichael did not have a private right of action to bring count I under section 8-101(c). (*Id.*). PTI claimed that the Court's consideration of the issue would be "in accord with its duty to 'avoid the adjudication of constitutional questions when a case can be decided on other grounds.'" (*Id.*) (citing *Marconi v. City of Joliet*, 2013 IL App (3d) 110865, ¶ 16). And PTI further claimed that a reviewing court, to avoid reaching a constitutional issue, can consider an issue not raised below. (*Id.*) (citing *Marconi*, 2013 IL App (3d) 110865, ¶ 16).

Importantly, however, PTI cited no authority permitting a court to consider an issue that was the subject of a denied motion to dismiss, and one asserted as an affirmative defense to a voluntarily dismissed count that the plaintiff refiled in a separate action. A voluntary dismissal renders appealable only prior orders that are "final in nature." *Dubina*, 178 Ill. 2d at 503. The circuit court's denial of PTI's motion to dismiss the private-right-of-action claim was not such an order. And neither authority cited by PTI in support of jurisdiction holds otherwise. (PTI Br. at 5).

Despite the absence of jurisdiction, and even though the Secretary suggested the necessity of Rule 304(a) language (Secretary App. Br. at 3[8]), the Appellate Court proceeded to decide the nonfinal issue of whether Carmichael had a private right of action to support count I, *see Carmichael v. Union Pac. R.R. Co.,* 2018 IL App (1st) 170075, ¶¶ 2, 10. But the Appellate Court had no jurisdiction to do so. *See, e.g., Blumenthal v. Brewer*, 2016 IL 118781, ¶ 22 ("[A]bsent a supreme court rule, the appellate court is without jurisdiction to review judgments, orders, or decrees that are not final."). Although the Appellate Court addressed the statutory question concerning Carmichael's private right of action, a matter that the circuit court did not address in a final order, the Appellate Court did not discuss the merits of the constitutional counterclaim. *See Carmichael,* 2018 IL App (1st) 170075, ¶ 24 ("[W]e conclude

[8] The Secretary's brief is not available on Westlaw.

that section 8-101(c) of the Vehicle Code does not imply a private right of action for passengers in vehicles subject to the provisions of that section and PTI's counterclaim challenging the constitutionality of the amendment to section 8–101(c) is therefore moot."). But the Appellate Court should not have ruled on any issue. The denial of a motion to dismiss is not final, and a later voluntary dismissal does not make it final.

Rather than considering either of the two issues presented here — Carmichael's private right of action issue and the constitutionality of section 8-101(c) — this Court should vacate the Appellate Court's opinion for lack of jurisdiction. The proper place for consideration of whether Carmichael had a private right of action under count I is in the new circuit court action, where that matter is now pending but stayed.

This Court, therefore, should dismiss this appeal, find that the petition for leave to appeal was improvidently granted, and vacate the Appellate Court's opinion.

II. If jurisdiction exists, this court reviews *de novo* the circuit court's dismissal of a complaint under section 2-615 of the Code of Civil Procedure.

Provided there is jurisdiction, *de novo* review applies, given that the circuit court granted the Secretary's motion to dismiss pursuant to section 2-615 the Code of Civil Procedure. *Pooh-Bah Enters., Inc. v. Cty. of Cook*, 232 Ill. 2d 463, 473 (2009); *see* 735 ILCS 5/2-615 (2016). Review is also *de novo* because the constitutionality of a statute presents a question of law. *Grand*

Chapter, Order of E. Star of State v. Topinka, 2015 IL 117083, ¶ 10. On *de novo* review, this Court can affirm the lower court's judgment for any reason supported by the record and law. *Beacham v. Walker*, 231 Ill.2d 51, 61 (2008).

A section 2-615 motion challenges the legal sufficiency of the plaintiff's claim. *Ripes v. Schlechter*, 2017 IL App (1st) 161026, ¶ 12. In assessing that sufficiency, this Court construes all well-pleaded facts and any reasonable inferences in the plaintiff's favor. *Id.* A section 2-615 motion is the proper vehicle for a defendant to challenge the legal sufficiency of a claim that a statute is unconstitutional. *See Pooh-Bah Enters., Inc.*, 232 Ill. 2d at 473. Although the Secretary also moved to dismiss pursuant to section 2-619 of the Code of Civil Procedure (C236), that was erroneous, but the misdesignation of a motion to dismiss "fatal" only when it caused prejudice to the plaintiff, *Ill. Graphics Co. v. Nickum*, 159 Ill. 2d 469, 484 (1994); (C236, C361). None of the parties claimed confusion over the substance of the Secretary's motion to dismiss, and the circuit court displayed no confusion either. Accordingly, this court should proceed to decide *de novo* whether the circuit court correctly granted the Secretary's section 2-615 motion.

III. This Court should not reach the constitutional issues in this appeal.

The constitutional issues raised by PTI's counterclaim are not before this Court for two alternative reasons. First, if this Court determines that section 8-101(c) of the Code does not contain a private right of action enabling Carmichael to sue PTI, then this Court need not consider PTI's counterclaim,

which is moot. But even if Carmichael had such a right of action, PTI nevertheless lacked standing to bring a declaratory judgment action regarding the possible criminal implications of section 8-101(c).

A key maxim is that "a court of review should consider the constitutionality of a statute as a matter of last resort, only after the resolution of any other nonconstitutional and constitutional grounds for disposing of the case." *People v. Carpenter*, 228 Ill. 2d 250, 264 (2008); *Flynn v. Ryan*, 199 Ill. 2d 430, 439 n.1 (2002). The ability of Carmichael to bring a private right of action is all that this Court should decide, if there is even jurisdiction for this Court to reach that issue (*see* section I, above).

A brief recap of the procedural posture: In its initial response to Carmichael's complaint, PTI raised the affirmative defense that section 8-101(c) of the Code provided no civil remedy for Carmichael to allege that PTI breached that provision. (C70). Later, PTI filed a counterclaim alleging that section 8-101(c) violated several constitutional provisions. (C125 (A29), C134 (A38)); *see also* C392, C821 (A44)). It follows that if PTI prevails in its arguments that section 8-101(c) does not create a private right of action (*see* PTI Br. at 20-34), then this Court need not consider the constitutional claims. Whereas PTI conceded in the Appellate Court that this Court should not decide the constitutional issues if Carmichael had no private right of action (PTI App. Br. at 15-16 (2017 WL 10397986, at **15-16), PTI App. Reply Br. at 12), now PTI takes the opposite tack, arguing that this Court *should* reach the

constitutional questions (PTI Br. at 34-36). But in urging this Court to address the constitutional issues, PTI essentially is complaining that the Appellate Court did not delve into that subject, leaving intact the circuit court's ruling that section 8-101(c) is constitutional. That assertion is forfeited, given that PTI argued the reverse in the Appellate Court, when it contended that the Court should limit its decision to the statutory question. *Cf. Freesen, Inc. v. Indus. Comm'n*, 348 Ill. App. 3d 1035, 1043 (1st Dist. 2004) ("A fundamental part of the adversarial process is that a party forfeits his right to complain of an alleged error where to do so is inconsistent with the position he took in an earlier court proceeding.").

PTI's justifications for this change in position do not stand up to scrutiny. Although PTI claims that Ill. Sup. Ct. R. 318(a) authorizes this Court to consider the constitutional issues, nothing in that rule contemplates this Court addressing a subject that arises when (1) the Appellate Court did not consider the issue, and the parties who prevailed in the circuit court seek no review by this Court on an absent question; (2) the sole basis for the petition for leave to appeal is the denial of a defendant's motion to dismiss on an unrelated issue of statutory interpretation; and (3) the plaintiff voluntary dismisses his cause of action based on the statute, but then reinstates that claim in the circuit court. (*See* PTI Br. at 34-35). None of the cases cited by PTI concern that unusual scenario. (*Id*. at 34-36) (citing, *e.g.*, *Cent. City Educ.*

Ass'n, IEA/NEA v. Ill. Educ. Labor Relations Bd., 149 Ill. 2d 496, 524-25 (1992)).

And both Rule 318(a) and cases interpreting it do not contemplate that a lack of jurisdiction on the primary issue before the Court supplies a basis for review when an appellee raises an unrelated, nonfinal issue via the cross-appeal provision of the rule. True, Rule 318(a) allows "any appellee, respondent, or coparty [to] seek and obtain any relief warranted by the record on appeal without having filed a separate petition for leave to appeal or notice of cross-appeal or separate appeal." Ill. Sup. Ct. R. 318(a). But by the explicit terms of Rule 318(a), the record here does not warrant "any relief," given that the circuit court's decision denying PTI's motion to dismiss count I was not a final judgment. (C1032-39 (A9-16)). While PTI invokes the "interest of judicial economy," "ripening seeds of litigation," critical constitutional rights for the accused, and anticipated business expenses that PTI may face (PTI Br. at 35-36), none of the decisions that PTI catalogs involve nonfinal orders, which was the subject of Carmichael's petition for leave to appeal and the Appellate Court's decision. And none of these rationales like "ripening" litigation overcomes an absence of jurisdiction.

Yet even if Carmichael had a private right of action, PTI lacked standing to bring its complaint for a declaratory judgment. For such standing, there must be an "actual controversy." *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 489 (2008) (internal quotation marks and citation omitted); *see also*

735 ILCS 5/2-701(a) (2016)). Further, "the party seeking the declaration must be interested in the controversy," which means "not . . . merely having a curiosity about or a concern for the outcome of the controversy," but instead "a personal claim, status, or right which is capable of being affected." *Vill. of Chatham v. Cty. of Sangamon,* 216 Ill. 2d 402, 420 (2005) (internal quotation marks and citation omitted). Those requirements apply to a counterclaim, which is a "distinct action" requiring an independent basis of legal support. *Benford v. Everett Commons, LLC*, 2014 IL App (1st) 131231, ¶ 20 (internal quotation marks and citation omitted).

PTI failed to meet these requirements because no actual controversy exists to implicate any of PTI's interests. It is not being prosecuted for lacking the required underinsured and uninsured motorist coverage required by section 8-101(c). And it is not under threat of prosecution for having lacked that coverage at the time of the accident in 2010 because the statute of limitation has run. *See* 720 ILCS 5/3-5 (2016). The result is that if PTI is in compliance, it faces no possible sanctions. And it has not represented that it is not in compliance. But even if PTI is not in current compliance, the mere fear of prosecution would be insufficient to confer standing. *Flynn*, 199 Ill. 2d at 439-40. Rather, a "concrete dispute" does not exist unless PTI suffers actual harm or the threat of one. *See id.* Even if the Secretary contended below that he was "not arguing now that PTI's claim is not 'ripe for review' or that it does not present an 'actual case or controversy'" (C372), this Court can still

reach the issue, *see Flynn*, 199 Ill. 2d at 439 n.1 ("waiver is an admonition to the parties, not a limitation on the powers of this court").

Accordingly, this Court should not reach the constitutional issues discussed in sections IV and V, below.

IV. The statute was not unconstitutionally vague.

The circuit court correctly determined that section 8-101(c) of the Code was not vague either on its face or applied to PTI. That provision contains two requirements at issue here. First, contract carriers must carry required underinsured and uninsured motorist coverage when "transporting employees in the course of their employment on a highway of this State in a vehicle designed to carry 15 or fewer passengers." 625 ILCS 5/8-101(c) (2016). Second, the coverage amount must be "in a total amount of not less than $250,000 per passenger, except that beginning on January 1, 2017 the total amount shall be not less than $500,000 per passenger." *Id.* As the circuit court properly held, PTI failed to meet its burden of showing any vagueness in either of these two portions of the statute. For that reason, section 8-101(c) did not violate federal or state guarantees of due process. *See* U.S. Const. amend. XIV; Ill. Const. art. 1, § 2.

As an initial matter, a court considering a provision's constitutionality will interpret a statute in to uphold its validity and constitutionality, if possible. *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 290-291 (2003).

That obligation exists because courts presume statutes to be constitutional. *People v. Howard*, 2017 IL 120443, ¶ 24. Given this presumption, the party attacking a statute bears the burden of demonstrating its constitutional invalidity. *Id*. To prevail on a vagueness challenge, a plaintiff must not only overcome this presumption of constitutionality, but also show that a provision fails either of two requirements. First, a "is not unconstitutionally vague if it is explicit enough to serve as a guide to those who must comply with it." *Gen. Motors Corp. v. State of Ill. Motor Vehicle Review Bd.*, 224 Ill. 2d 1, 24 (2007)). A statute's language need not supply "mathematical precision." *Vuagniaux v. Dep't of Prof'l Regulation*, 208 Ill. 2d 173, 193 (2003). And the challenging party "must establish that the statute is vague as applied to the conduct for which the party is being prosecuted." *Cryns*, 203 Ill. 2d at 291.

The second burden in a vagueness challenge requires showing that the statute omits "explicit standards to police officers, judges and juries," increasing the risk of "arbitrary and discriminatory enforcement." *People v. Velez*, 2012 IL App (1st) 101325, ¶ 44. Vagueness is inherent in a statute if "its terms are so ill-defined that the ultimate decision as to its meaning rests on the opinions and whims of the trier of fact rather than any objective criteria or facts." *Id* (internal quotation marks and citation omitted). But if a court interprets a disputed statutory provision in a way that makes it "sufficiently definite," then the plaintiff's vagueness challenge cannot succeed. *Id.*; *see also People v. Lang*, 113 Ill. 2d 407, 455 (1986). And hypothetical arguments

offered by a party challenging the statute do not establish vagueness, especially if that party suggests that only some statutory terms are ambiguous. *People v. Greco*, 204 Ill. 2d 400, 416 (2003).

When presented with both as-applied and facial vagueness challenges, courts should address the as-applied question first because a statute that is constitutional as applied to a plaintiff precludes a facial challenge. *People v. Garvin,* 219 Ill. 2d 104, 125 (2006). Accordingly, the circuit court correctly concluded that two aspects of the statute were not vague. First, the court held that there was no ambiguity in extending the insurance coverage requirement to vehicles transporting 15 or fewer passengers. (C804 (A4)). Second, the court concluded that the $250,000 liability limit for every passenger was not vague. (C805 (A5)). As discussed below, each determination is supported by the record and law.

A. The phrase "in a vehicle designed to carry 15 or fewer passengers" was not vague.

The circuit court correctly determined that the statutory mandate for contract carriers to provide sufficient coverage in vehicles "designed to carry 15 or fewer passengers" was not constitutionally vague, rejecting PTI's assertions that companies affected by the statute cannot determine if they fall within its reach. (C804 (A4)); 625 ILCS 5/8-101(c) (2016). In reaching that conclusion, the court explained how the provision meets both of the vagueness standards necessary to overcome a constitutional challenge.

1. The statutory language is straightforward.

First, the language focusing on "a vehicle designed to carry 15 or fewer passengers" gives people with "ordinary intelligence" an understanding of permissible acts and unlawful ones. *See Gen. Motors Corp.*, 224 Ill. 2d at 24. As the circuit court noted, the statutory language is straightforward and not inherently confusing. From the words "15 or fewer," it follows that the vehicles at issue include ones that carry anywhere from one to 15 passengers. (C804 (A4)). The court further held that the statute logically includes vehicles that can seat a maximum of six passengers, including vans like the ones used by PTI. (*Id.*; *see* C337 (A132)).

Phrasing with an exact number, often limited by the words "or fewer," is common across many Illinois statutory provisions, suggesting categorical unambiguity. *E.g.*, 815 ILCS 603/5 (2016) (defining multi-family residences as "12 or fewer units in a single building"); 30 ILCS 750/9-4.2a(b) (2016) (five or fewer employees required for business to qualify for loans); 5 ILCS 420/3A-5 (2016) (relating to gubernatorial appointments confirmed by Senate "90 or fewer days" before end of governor's term). Indeed, the wording "15 or fewer passengers" appears in several parts of the Code and have generated no controversy about vagueness or ambiguity. *See*, *e.g.*, 625 ILCS 5/18b-101 (2016) (definition of commercial motor vehicle); 625 ILCS 5/13-101 (2016) (concerning certificates of safety); 625 ILCS 5/18b-106.1 (2016) (hours of

service for drivers employed by contract carriers); 625 ILCS 5/13-107 (2016) (investigation of complaints against testing stations).

Other jurisdictions use similar formulations, including (1) the definition in the Code of Federal Regulations for "multipurpose passenger vehicle," *see* 49 C.F.R. § 571.3 (those "designed to carry 10 persons or less"); (2) Maryland's definition of "[p]assenger car" in its requirements for underinsured and uninsured motorist coverage, *see* MD CODE ANN., TRANSP. § 11-144.2 (West 2016) (vehicles "designed for carrying 10 persons or less"); and (3) Texas's similar requirements, which apply to vehicles "designed to carry 15 or fewer passengers," *see* TX TRANSP. CODE ANN. § 644.054 (West 2017). The ubiquity of this phrasing reflects its lack of ambiguity.

Against the weight of this authority, PTI fails to meet its burden of showing that the provision at issue is unconstitutional. *See Howard*, 2017 IL 120443, ¶ 24; (PTI Br. at 31-38). At its essence, PTI claims that section 8-101(c) of the Code is unconstitutionally vague because it is capable of two competing interpretations. (PTI Br. at 32, 34). But even if PTI is correct that the statutory language excludes six-passenger vehicles from the class of vehicles designed to carry "15 or fewer" people, a purported dual meaning is not dispositive in establishing vagueness. On the contrary, judicial resolution that ensures a statute is "sufficiently definite" will foreclose a finding of vagueness in violation of due process. *Velez*, 2012 IL App (1st) 101325, ¶ 44. And in deciding between competing interpretations, a court necessarily will

conclude that only one meaning is reasonable. *See In re B.L.S.*, 202 Ill. 2d 510, 515 (2002).

The meaning that PTI ascribes to section 8-101(c) is unreasonable. The words "in a vehicle designed to carry 15 or fewer passengers" are explicit and clear. The language covers vans or minivans intended to carry anywhere between one and 15 persons. And section 8-101(c) applies to smaller vehicles, including SUVs that seat six or seven passengers. PTI's hypothetical claim that the statute applies to "even a 2-person coupe" (PTI Br. at 32) is irrelevant because contract carriers are unlikely to transport employees in sports cars. Indeed, PTI uses one type of vehicle in its fleet: six-passenger Chevrolets. (C337 (A132)). Such speculation by PTI, moreover, falls short of illustrating vagueness. *See Greco*, 204 Ill. 2d at 416. PTI cites no case in its arguments about vagueness deeming a phrase like "15 or fewer" (or some other quantity) in any statute to be ambiguous and constitutionally vague. And that stands to reason because if the language "or fewer" were vague, then dozens of Illinois statutory provisions would succumb to claims of unconstitutionality.

Additionally, PTI's suggestion that the provision applies only to vehicles designed to carry an exact number of 15 passengers — (*See* PTI Br. at 33, 38), vehicles larger than PTI's current fleet — ignores the statutory mandate covering vehicles designed to seat "15 or fewer" persons, *see* 625 ILCS 5/8-101(c) (2016). But if the General Assembly intended to single out only one category of vehicle, such as a van or minivan capable of seating as many as 15

people, then it would not have included the words "or fewer." Those words are not surplus to be ignored. *See Allstate Ins. Co. v. Menards, Inc.*, 202 Ill. 2d 586, 593 (2002).

"Or fewer aside," PTI overlooks something fundamental about the wording of the statute, which specifies the insurance requirements for contract carriers that transport employees like Carmichael "in a *vehicle* designed to carry 15 or fewer passengers." 625 ILCS 5/8-101(c) (2016) (emphasis added). Statutes must be given their plain meaning. *Murray v. Chi. Youth Ctr.*, 224 Ill. 2d 213, 235 (2007). PTI's theory that the provision is ambiguous and misdirected at companies that use six-passenger, car-based vehicles (as opposed to vans, minivans, or motor coaches) is incorrect, given the statutory language. If the General Assembly wished to limit the statute's application to, say, vans or minivans, it would have deployed those words. It did not. All vehicles are covered, including PTI's implausible example of companies hiring contract carriers to drive their employees to work in two-seater coupes. (PTI Br. at 51). But if such a company existed, section 8-101(c) would require the same insurance levels.

2. There is no danger of arbitrary enforcement.

Under the second vagueness requirement, the court's conclusion makes clear that the phrase "designed to carry 15 or fewer passengers" poses no danger of arbitrary enforcement. (C804 (A4)). Given that section 8-101(c) of the Code definitively categorizes vehicles according to whether they can carry

up to 15 passengers, law enforcement officers will not gain the impermissible power to ticket and prosecute offenders in an arbitrary and subjective fashion. *See Velez*, 2012 IL App (1st) 101325, ¶ 44; *Lang*, 113 Ill. 2d at 455. Instead, they will know that the requirement of underinsured and uninsured motorist coverage applies to any vehicle, as the circuit court held, "so long as its passenger capacity is not more than 15." (C804 (A4)). Police officers are capable of identifying such vehicles.

That aside, PTI's arguments about the "15 or fewer" provision are meritless, if not admitted. (PTI Br. at 32, 37-38). As a threshold matter, PTI did not raise its arguments on this point when responding to the Secretary's motion to dismiss. (C308). Instead, PTI contended only that the $250,000 insurance limit was vague. (C318-19). Later, when the Secretary pointed out that PTI made no arguments about "fifteen or fewer" (C367), PTI addressed that statutory phrase in supplemental briefing (C581-83). Only when prompted by the Secretary (C367) and then ordered by the court to file additional briefing (C373) did PTI challenge the "15 or fewer" language (C531-34). It had the opportunity to do so months earlier, however, in response to the Secretary's motion to dismiss yet did not do so.

That aside, PTI's arguments fail because it lacked standing to claim that section 8-101(c) of the Code was vague, given its concession that at the time of the 2010 accident, it did not carry the required insurance coverage. A party has no standing to challenge a statute on vagueness grounds when there

is no dispute that the party is in violation of the disputed provision. *People v. Powell*, 343 Ill. App. 3d 699, 703-04 (4th Dist. 2003).

In *Powell*, a defendant charged with a traffic violation for following a semitrailer truck too closely admitted to the ticketing state police officer that he did violate the statute. *Id.* When the motorist challenged the "following too closely" statute on vagueness grounds, the Appellate Court held that he lacked standing to make that claim because by admitting that he followed the truck too closely, finding that the motorist "could not have been aggrieved by any alleged vagueness in the statutory prohibition." *Id.* On the contrary, "he necessarily admitted the prohibition was clear and definite enough for him (and, therefore, [the trooper]) to know he had violated it under the circumstances." *Id.*

Like the driver in *Powell*, PTI lacks standing to attack section 8-101(c) of the Code because it admitted that it violated that provision in two different ways. First, a PTI executive stated that the company carried underinsured and uninsured motorist coverage up to only "$20,000 per person," not the required $250,000 per passenger. (C344 (A134)). Second, PTI acknowledged that Carmichael was injured in one of PTI's vehicles, which was "designed to carry 15 or fewer passengers." (C128-29 (A32-33)). That second admission, which covers PTI's entire fleet of six-passenger vehicles (seven occupants with the driver) (C337 (A132)), defeats PTI's later arguments that section 8-101(c) ambiguously defines the meaning of "15 or fewer passengers." An answer

containing facts admitted in a verified pleading is "a binding judicial admission." *Los Amigos Supermarket, Inc., v. Metro. Bank & Tr. Co*., 306 Ill. App. 3d 115, 124 (1st Dist. 1999).

To be sure, PTI filed an amended answer after the circuit court ruled on the constitutionality of its counterclaims, changing its response to state that "its vehicle was designed to carry a driver and six passengers." (C824 (A47)). But even though an amended answer "becomes evidentiary, not judicial," *Kulchawik v. Durabla Mfg. Co.*, 371 Ill. App. 3d 964, 970 (1st Dist. 2007), evidentiary admissions still "may be contradicted or explained," *In re Estate of Rennick*, 181 Ill. 2d 395, 406 (1998). It follows that PTI's dual answers about the capacity of its vehicles do not undermine the circuit court's conclusion that the "15 or fewer passengers" language in section 8-101(c) is neither vague nor ambiguous. All that PTI accomplished with its amended answer was to confirm that its vehicles are covered by the statute, given that they carry six passengers and a driver. Seven is fewer than 15. And this information represented "assertions of concrete facts within" PTI's "knowledge." *Sperl v. Henry*, 2018 IL 123132, ¶ 36. As the circuit court correctly concluded, vehicles like PTI's fall within the statutory requirement of "15 or fewer passengers." (C804 (A4)).

PTI's arguments falter against another procedural bar. An individual challenging a statute's constitutionality "may not raise a constitutional challenge to a provision of a statute that does not affect him or her." *In re*

Veronica C., 239 Ill. 2d 134, 147 (2010). Yet PTI has never claimed that it was subject to the criminal penalties available under 625 ILCS 5/8-116 (2016) for violations of section 8-101(c) of the Code. Indeed, PTI not only has not been prosecuted or put in jeopardy of prosecution, but PTI also has represented that it has taken steps to purchase the very insurance required by the Code. (C344-45 (A134-35)). It follows that if PTI is in compliance with the Code, as the record suggests,[9] then the company is not at risk of prosecution. And that dooms PTI's theory that the statute already has harmed its interests. Beyond that, increased costs, which PTI can pass on to clients like Union Pacific, do not furnish the requisite grievance for standing. *See Liberman v. Cervantes*, 511 S.W.2d 835, 839 (Mo. 1974) (added cost of business imposed by requirement not taking of property without due process of law).

Finally, PTI urges the Court to employ the rule of lenity and conclude that it should be immune from section 8-101(c). (PTI Br. at 31-34). But PTI overlooks the fact that this rule applies when there is "ambiguity in a criminal statute," but only if legislative intent is not jeopardized. *People v. Reese*, 2017 IL 120011, ¶ 30. As demonstrated, however, the statute is not flawed by any ambiguity. Language on "15 or fewer passengers" includes vehicles that carry

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[9] A section 2-615 motion to dismiss can be based on plaintiff's failure to plead standing. *In re Scarlett Z.-D.*, 2015 IL 117904, ¶ 21. Although the Secretary did not challenge the criminal-law basis for PTI's standing in his motion to dismiss, this Court can consider the issue. *See Flynn*, 199 Ill. 2d at 439 n.1 ("waiver is an admonition to the parties, not a limitation on the powers of this court").

anywhere from one to 15 individuals. (C804 (A4)). Because no ambiguity exists, PTI does not merit the rule of lenity.

PTI has failed to show that section 8-101(c) is vague because of the statutory language "in a vehicle designed to carry 15 or fewer passengers."

B. There was no vagueness in the requirement that contract carriers obtain insurance coverage "in a total amount of not less than $250,000 per passenger."

The circuit court also properly held that there is no unconstitutional vagueness in the statute's requirement that contract carriers provide insurance coverage "in a total amount of not less than $250,000 per passenger" traveling in their vehicles. (C805 (A5)). As the circuit court concluded, that phrasing makes clear that every passenger traveling in a contract carrier's vehicle is entitled to insurance coverage up to $250,000, regardless of how large the vehicle or how many people are aboard. (*Id.*).

That conclusion makes sense. The $250,000 requirement (now increased by the General Assembly) gives contract carriers an easily discernible benchmark to understand their compliance obligations, as the circuit court held. (C805 (A5)); *see Gen. Motors Corp.*, 224 Ill. 2d at 24. In sum, there is nothing intrinsically mystifying about a coverage minimum that must go as high as $250,000 for every potentially injured individual traveling from one work site to another as part of her required job duties. The mathematical result that follows is that a vehicle holding as many as 15 passengers must carry $3,750,000 in underinsured and uninsured motorist

coverage ($250,000 x 15). By the same token, a vehicle that transports six passengers must be covered by insurance totaling $1.5 million ($250,000 x 6).

And the circuit court's analysis satisfies the second vagueness standard. (C805 (A5)). By requiring that contract carriers certify to the Secretary their "proof of financial responsibility" in carrying the required $250,000 coverage, the Code guards against arbitrary and subjective enforcement, further defeating PTI's vagueness assertions. *See Lang*, 113 Ill. 2d at 455. Either a contract carrier has the requisite insurance or it does not. Those binary options leave no room for arbitrary prosecution by law enforcement agents.

PTI's arguments on this point show no vagueness. (PTI Br. at 36-38). In the first place, PTI conceded in the circuit court that contract carriers will assume "maximum passenger capacity" in obtaining the required insurance coverage. (C318). In other words, PTI understood at the outset of this litigation the precise meaning of "in a total amount of not less than $250,000 per passenger," diminishing any chance of vague implications. Further, PTI later submitted an affidavit stating that its broker requires insurance purchasing to be based on a maximum total seating possibility of six passengers. (C344-45 (A134-35)). That is a sensible approach; after all, a contract carrier cannot call its insurer each time a vehicle transports a varying number of passengers on differing trips, and no broker likely is willing to write policies anew on a daily or hourly basis.

In sum, there is no lack of clarity on how much underinsured and uninsured motorist coverage a contract carrier must purchase. PTI in fact knows from its insurance carrier exactly how much coverage it is supposed to secure. (C344-45 (A134-35)). For these reasons, the circuit court correctly concluded that the $250,000 requirement in section 8-101(c) of the Code was not unconstitutionally vague.

Because PTI cannot sustain its heavy burden of showing that section 8-101(c) was vague as applied to its operations, it also cannot demonstrate that the provision was facially unconstitutional. *See Garvin,* 219 Ill. 2d at 125.

V. Section 8-101(c) of the Code did not violate the special legislation or equal protection provisions of the Illinois Constitution.

This Court also should uphold the circuit court's determination that section 8-101(c) of the Code did not violate the special legislation or equal protection clauses of the Illinois Constitution. *See* Ill. Const. art. IV, § 13; Ill. Const. art. I, § 2. As the circuit court rightly held, section 8-101(c) neither confers a special benefit on a select group nor lacks a rational basis. (*See* C806-07 (A6-7)).

The Illinois Constitution provides that the "General Assembly shall pass no special or local law when a general law is or can be made applicable." Ill. Const. art. IV, § 13. "The clause prevents the legislature from making classifications that arbitrarily discriminate in favor of a select group." *Piccioli v. Bd. of Trs. of Teachers' Ret. Sys*., 2019 IL 122905, ¶ 18; *see also Moline Sch.*

Dist. No. 40 Bd. of Educ. v. Quinn, 2016 IL 119704, ¶ 18 (special legislation clause guards against "arbitrary legislative classifications that discriminate in favor of a select group without a sound, reasonable basis").

General and specific laws differ because while a general law operates with similar effect on persons in a comparable situation, laws are special if they put "a particular burden or confer a special right, privilege, or immunity upon only a portion of the people of our State." *Moline Sch. Dist. No. 40 Bd. of Educ. v. Quinn*, 2016 IL 119704, ¶ 21 (citing *Bd. of Educ. of Peoria Sch. Dist. No. 150 v. Peoria Fed'n of Support Staff, Sec./Policeman's Benevolent & Protective Ass'n Unit No. 114*, 2013 IL 114853, ¶ 48). Even if a law appears to qualify as special legislation, it does not violate the constitution "merely because it affects only one class of entities and not another." *Moline Sch. Dist. No. 40 Bd. of Educ.*, 2016 IL 119704, ¶ 22. Instead, the unique benefit received by a class, entity, or must create an "exclusive privilege that is denied to others who are similarly situated." *Id.*

Given this framework, courts make a "'dual inquiry'" when analyzing a special legislation challenge. *See Curielli v. Quinn*, 2015 IL App (1st) 143511, ¶ 21 (quoting *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12, 22 (2003)). And in making that two-tiered analysis, the court's review is "limited to determining whether the challenged legislation is constitutional, and not whether it is wise." *Kakos v. Butler*, 2016 IL 120377, ¶ 21 (internal quotation marks and citation omitted). This Court reviews special legislation challenges

with a limited and especially deferential approach. *Burger v. Lutheran Gen. Hosp.*, 198 Ill. 2d 21, 60 (2001).

First, the Court considers whether the law favors "a select group." *Curielli*, 2015 IL App (1st) 143511, ¶ 21. If it does, the Court then assesses whether the statutory classification is arbitrary. *Id.* If no fundamental right is at stake, then the Court considers whether the challenged provision is supported by a rational basis. *Id.* The circuit court here correctly examined both elements of the special legislation test, reaching a conclusion that this Court should not disturb.

A. Section 8-101(c) of the Code did not favor "a select group."

Regarding the first factor, this Court should conclude that section 8-101(c) of the Code does not create an arbitrary categorization that results in discriminatory favoritism of "a select group." *See Moline Sch. Dist. No. 40 Bd. of Educ.*, 2016 IL 119704, ¶ 18; *Curielli*, 2015 IL App (1st) 143511, ¶ 21. To violate the special legislation prohibition, a provision must do more than merely focus on a certain group. *Moline Sch. Dist. No. 40 Bd. of Educ.*, 2016 IL 119704, ¶ 22. Rather, the category in question must share significant characteristics with another, "similarly situated" group. *Id.* In other words, the excluded group cannot be rationally differentiated from the group covered by the legislation. *Id.*

In *Curielli*, for instance, the Appellate Court explained why no special benefit was conferred by a law prohibiting licensed real estate brokers from

acting in a legal capacity during a real estate transaction. *See* 2015 IL App (1st) 143511, ¶ 22. There are brokers who are not attorneys, the Court noted, who cannot practice law; at the same time, there are attorneys not licensed as brokers, a group that cannot conduct real estate transactions; and, in a "distinct and separate" third category, there is a limited group of individuals who are licensed attorneys and licensed brokers, but who are forbidden from acting in a dual capacity in a real estate transaction. *Id.* This last group received no special benefit under the provision under scrutiny. *Id.*

The same reasoning applies here. The group in question was employees of entities that contract with third-party carriers — without those employees' input or voice — to transport those employees for work purposes, when that transportation is the only means they may have to get to their jobs. *See* 625 ILCS 5/8-101(c) (2016). But other groups, including ones cited by PTI, are distinguishable. (PTI Br. at 44-45).

For instance, vacationers or business travelers who occasionally ride in courtesy vans provided by rental car companies at some sites or hotels do not ride as frequently as employees required to travel once or more daily as a condition of their work, as the General Assembly likely recognized. (*See id.* at 44). These vacationers or business travelers have a choice about which rental car companies to select — a point that PTI overlooks. (*Id.* at 52). If such consumers find that the vehicles or drivers for a rental car agency at a particular location seem unsafe or not to their liking, then they can opt to do

business with a competitor. The same is true of passengers dissatisfied with the evident lack of safety for vehicles and drivers affiliated with particular taxi cab companies or livery services. Consumers do have a choice between competitive services; employees required to travel to work in car or van services mandated by their employer do not. PTI ignores that reality.

By contrast, patients transported in ambulances and other specialized medical vehicles, and children going to school or sports events, may not have that same choice. (*See id.*). But that distinction does not matter because PTI ignores the point that the drivers of medical transport vehicles, school vans and minibuses, and courtesy vans of a certain weight must possess specialized drivers' licenses, something not true of PTI's drivers of six-passenger vehicles. In contrast with PTI's fleet, any vehicle that transports 16 or more persons (driver included) requires the operator to have a commercial driver's license. 625 ILCS 5/6-500(6)(A)(ii), 5/6-507(a)(1) (2016). And professional training and regulation is required as well for traditional taxi, limousine, and livery drivers, all of whom must be licensed in their operating zones, by cities or other jurisdictions. *See, e.g,* Chi., Ill., Mun. Code § 9-104-010 *et seq.* (2017) (https://bit.ly/2XANGsr). In fact, in all of the supposedly similarly situated examples that PTI lists, the vehicle drivers must have a specialized driver's license, making those examples not similar to PTI's operations. (PTI Br. at 44).

Further on the issue of information and choice, PTI asserts that "[n]o busy traveler (employee or otherwise), much less patients transported by ambulance or children being transported to and from educational or recreational facilities, [has] the time, opportunity or wherewithal to determine the UM/UIM coverage of the operators of the vehicles in which they ride." (*Id.* at 52). But it is unlikely that a reasonable, busy traveler ever would investigate the insurance levels of *any* vehicle operators (or the insurance portfolios of airlines, hotels, amusement parks, and tour operators, in all likelihood), and nor is that information generally made publicly available. That makes PTI's argument untenable, for if investigation and inquiry into insurance contracts were a necessary component to the General Assembly's policy limit requirements, as PTI suggests, then no particular limit amount would ever be reasonable.

Another group of individuals not similarly situated to the transported workers of PTI is contract carriers' own employees. (*See* C806 (A6)); PTI Br. 44 ("Motor vehicle carriers who transport and charge employees in the course of their employment on a per-ride basis, such as taxis, limousines, and other livery operators.")). It is unclear what PTI envisions here with its hypothetical, given that taxi drivers ordinarily do not charge themselves to commute in their own cabs, and nor do other types of livery drivers; they are at work once they get behind the wheels of their vehicles (which may be their own personal cars). By comparison, the instance of a PTI driver (or one of its

competitors) transporting *colleagues* instead of clients may be rare — a miniscule percentage of all the contract carrier's transportation activity, and one not worthy of legislative action, or at least not yet. In any event, the record reveals no such examples of PTI regularly engaging in moving its own employees in vans under contract to transport its clients' employees.

In contrast to these situations, the Code focuses on protecting employees with no choice about how their employers decide to move them between work sites, such as the employees of Union Pacific and others. Those employees may not even have automobiles of their own and, if they do, may not be able to afford underinsured and uninsured motorist coverage, which may not even apply in the work context. That is another distinction from other groups that PTI conjures, including people with disposable income who travel as passengers to and from work in taxis and limousines in urban areas, not to remote railway work sites that may not even provide employee parking. (*See* PTI Br. at 44). And PTI's example of medical vehicles that transport the seriously ill between treatment centers, homes, and other sites — likely a rare event for any one individual — cannot compare to the situation of a worker like Carmichael traveling to and from her job site twice daily, 40 or so times per month. (*See id.* at 44).

PTI further argues that the statutory focus is arbitrary because it does not apply to "other vehicle operators for hire who transport passengers pursuant to Section 8," including some of the imagined scenarios above. (*Id.*

at 44). But that ignores two key facets of special legislation law. First, the General Assembly "need not choose between legislating against all evils of the same kind" or, alternatively, "not legislating at all." *Chi. Nat'l League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 367 (1985). Indeed, the legislative exercise of police power does not have to "deal with all conceivable evils at once; it may proceed one step at a time." *People v. Anderson*, 148 Ill. 2d 15, 31 (1992); *see Potts v. Ill. Dep't of Registration & Educ.*, 128 Ill. 2d 322, 335 (1989). If further work on an issue remains to be done, the General Assembly can "broaden the scope" of a statute "to include other possible groups." *Anderson*, 148 Ill. 2d at 31. It follows that a "remedial scheme will not be invalidated merely because it does not address every problem that might conceivably have been addressed" in the first instance. *Crusius ex rel. Taxpayers of State of Ill. v. Ill. Gaming Bd.*, 348 Ill. App. 3d 44, 59 (1st Dist. 2004), *aff'd*, 216 Ill. 2d 315 (2015) ("*Crusius II*).

PTI overlooks a second, related feature of special legislation law in suggesting that the employees protected under section 8-101(c) of the Code are too small to be anything other than "a select group" (PTI Br. at 44-45): Statutes designed to address certain issues and special problems are permitted to be underinclusive and can be as small as one person or entity. *E.g., Elementary Sch. Dist. 159 v. Schiller*, 221 Ill. 2d 130, 141, 151-52 (2006) (statute enacted for the property owner "and no one else" did not violate special legislation clause) (internal quotation marks and citation omitted);

Crusius II, 216 Ill. 2d at 333 (no special legislation violation with amendment affecting one riverboat gambling licensee).

Moreover, PTI's citation of another insurance provision and a case concerning insurance in the rental car field are inapposite. (PTI Br. at 42-43). This provision, which does not concern underinsured and uninsured motorist coverage, let alone specifically apply to contract carriers, makes PTI fret that "in an accident caused by the negligence of an uninsured motorist involving injuries to 15 passengers in a contract carrier's van, *each passenger* would have more than ten times the mandated insurance protection than if the accident was caused by the negligence of the contract carrier's own driver!" (*Id.* at 42) (emphasis in original) (citing 625 ILCS 5/8-109 (2016)). But while different provisions must be read together to facilitate harmonious interaction and operation of the statute as a whole, *see People v. Rinehart,* 2012 IL 111719, ¶ 26, PTI's insertion of this separate and unrelated provision does not reveal statutory ambiguity in section 8-101(c). First, PTI presents a hypothetical situation not present here by imagining that the liability from an accident with one of its vehicles, insured for $1.5 million, would conflict with what it claims to be a $300,000 cap imposed by section 109 of the Code. (PTI Br. at 35). But hypotheticals concerning isolated aspects of statutes do not generate unconstitutional vagueness. *See Greco*, 204 Ill. 2d at 416.

That aside, PTI's insistence on the relevance of a $300,000-per-vehicle cap for contract carriers when its drivers are at fault cannot be squared with

the higher threshold requiring each individual passenger to be insured for "not less than $250,000" when the fault is attributable to another driver who lacks sufficient insurance. 625 ILCS 5/8-101(c) (2016). But that variance is a legislative prerogative. Unless PTI plans on limiting its transportation to one passenger at a time to ensure perfect consistency across the Code, its approach would dramatically undermine the legislative intent to protect employees when more than just one is the passenger. And if PTI is dissatisfied about what it regards as an unjustified gap in insurance coverage, the General Assembly can next increase the cap in section 8-109 of the Code, raising it from $300,000 to $500,000 for incidents when contract carriers' own drivers are at fault. *See Crusius ex rel. Taxpayers of State of Ill.*, 348 Ill. App. 3d at 59 (General Assembly can solve problems one step at a time). Or PTI can purchase additional insurance.

But if PTI's implication about the current $300,000 cap is correct, and that should be the limit in section 8-101(c), then an accident injuring 15 passengers in a contract carrier's vehicle would result in insurance payments of just $20,000 per passenger — less than a tenth of what the provision envisions. Yet that level of coverage would erode the intended protection for employees transported by contract carriers as part of their job requirements, including employees who may not be wealthy enough to carry additional insurance (or have any insurance coverage whatsoever, or even own a car). PTI's citation of a case involving mandatory insurance minimums in the car

rental context, which does not relate to protections for employees with no say in how they are transported and what insurance their employers provide, does not bolster its position. (PTI Br. at 43 (citing *Nelson v. Artley*, 2015 IL 118058)).

In sum, section 8-101(c) of the Code does not favor one group over another substantively similar group. The groups and scenarios proposed by PTI are dissimilar to Carmichael and others who cannot choose how to travel to work sites on a daily basis, in vehicles not operated by people holding commercial drivers' licenses or other specialized licenses. On this basis alone, this Court should conclude that the provision is not an impermissible enactment of special legislation.

B. Section 8-101(c) of the Code was rationally related to a legitimate government purpose.

Even if this Court concludes that section 8-101(c) of the Code fails the first element of the bar on special legislation, it should hold that the provision is supported by a rational basis in the law, just as the circuit court held. (*See* C806-07 (A6-7)).

The rational basis test, similar to the analysis in an equal protection challenge, "asks whether the statutory classification is rationally related to a legitimate state interest." *Moline Sch. Dist. No. 40 Bd. of Educ.*, 2016 IL 119704, ¶ 24. Under that inquiry, the General Assembly's enactment of a statute is "not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *Big Sky Excavating,*

Inc. v. Ill. Bell Tel. Co., 217 Ill. 2d 221, 240 (2005). Consequently, "any set of facts" that a party can reasonably conceive is sufficient to justify the special class. *Id.* at 238.

The circuit court correctly concluded that section 8-101(c) of the Code, in requiring contract carriers who transport employees to purchase higher levels of underinsured and uninsured motorist coverage than other employers and transporters, revealed a rational purpose. "Such employees are being transported as part of their job, and have no choice in their employer's selection of contract carriers." (C806 (A6)). And it was this particular reason, as the court emphasized, that illustrates the General Assembly's decision to protect this vulnerable category of employees. (*Id.*).

That reasoning was correct, even if the group of individuals that the statute protects is unique, limited, or not frequently encountered. *See Piccioli*, 2019 IL 122905, ¶ 19 (holding "existence of a cutoff date in . . . statute does not necessarily render . . . law unconstitutional"). The General Assembly reasonably could have concluded that such employees travel one or more times daily to job sites distant from their homes, in otherwise inaccessible locations, in the vehicles of contract carriers. Given those circumstances, the legislature could have reasoned that this class of contract carriers for hire are more likely to be involved in accidents, even if not at fault, or perhaps more serious accidents, than other types of transporters, including, by way of example, a motor coach company that a law firm hires to move employees from its

Chicago Loop offices to Metra train stations several blocks away. For one thing, the coach drivers would be required to have commercial drivers' licenses. *See* 625 ILCS 5/6-500(6)(A), 5/6-507(a)(1) (2016). For another, attorneys and staff commuting across the Loop are not required as a condition of their employment to travel in the motor coaches if they prefer public transportation or walking.

Similar to those coach companies, carriers like PTI are handling an outsourced function for the employer and may not be under direct or sufficient supervision by the employer itself. But in contrast, PTI drivers (and those similarly situated) may not have the training, expertise, and licensing of other types of transporters, including how to drive defensively and take evasive action when another vehicle will imminently cause an accident.

Against this, PTI speculates that employees should enter into the (complicated) insurance marketplace, including railroad employees with purportedly generous work benefits, and engage in self-help. (*See* PTI Br. at 53-54). But that notion fails to account for the inability of many employees, even ones in unions, to afford liability insurance (which they may have no reason to carry and which may be inapplicable at work, if workers' compensation is available), let alone their incentive to buy underinsured and uninsured motorist coverage, which many people may not even be aware of and cannot afford. (*See id.*). And despite PTI's suggestion, the fact that they have other benefits as unionized employees does not compel the conclusion

under the special legislation requirements that the value of their lives must be limited to $25,000 per person in a catastrophic accident. (*Id.* at 53). One benefit in one area for certain employees does not pre-empt other ones. By PTI's logic, union employees should not obtain any "special" benefits if they work in buildings required to comply with the law and regulations administered by the Occupational Safety and Health Administration.

Yet with required, daily journeys via contract carrier, on highways and in possibly dangerous travel, the General Assembly conceivably could have concluded that contractual carriers like PTI could face unique incentives and pressures as profit-maximizing businesses that may compromise their passengers' safety. By contrast, a firm or company that provides an optional service to transport a fraction of its workers to and from the office is distinct. The employees are not captive passengers. And the employers may be contracting only with service providers (such as the coach company in the example above) that carry sufficient insurance, in a competitive marketplace, including insurance to protect workers hurt when an accident involves an underinsured or uninsured motorist.

All these reasons, grounded in "rational speculation unsupported by evidence or empirical data," *Big Sky Excavating, Inc.*, 217 Ill. 2d at 240, provide a sufficient rational basis for this Court to hold that section 8-101(c) of the Code is not special legislation, *see also Piccioli*, 2019 IL 122905, ¶ 20 (courts need "not engage in courtroom fact finding") (internal quotation

marks and citation omitted). In analogous cases, this Court has held that higher levels of insurance coverage are justified in situations once deemed to involve greater risk than other transportation modes. *See Weksler v. Collins*, 317 Ill. 132, 139-40 (1925) (upholding insurance requirement that allegedly "single[d] out taxicabs"). Similarly, an appellate court in another jurisdiction has upheld protections provided by employers to their employees at risk due to underinsured and uninsured motorists. *Millers Nat'l Ins. Co. v. City of Milwaukee*, 503 N.W.2d 284, 290-91 (Wisc. Ct. App. 1993) (reasonable to require city to bear the cost of procuring uninsured motorist coverage for its employees).

PTI's other arguments lack merit. It places unwarranted significance on the Secretary's citation of a federal study about the handling instability and accident propensity of 15-passenger vans. (*See* PTI Br. at 50-51). But that evidence does not defeat the safety rationale for a provision enacted to protect the health and welfare of employees regardless of the size of the vehicle that they travel in for work purposes. (*See* C599-637 (A8-127)). Under rational basis review, the Secretary had no burden to provide *any* type of evidence about the safety of any type of vehicle conceivably used by contract carriers in general or PTI in particular. *See Big Sky Excavating, Inc.*, 217 Ill. 2d at 235. And the fact that most rollover accidents may involve only a single vehicle, even if the vehicle may be taking evasive action because of the carelessness of

other drivers, does not undermine the catastrophic results of any rollover. (*E.g.*, PTI Br. at 50).

Moreover, PTI asserts that the Secretary could not show a rational basis to survive special legislation analysis. (PTI Br. at 50-51, 53). But PTI, not the Secretary, had the burden to clearly establish the constitutional invalidity of section 8-101(c) of the Code. *See Howard*, 2017 IL 120443, ¶ 24. And it has not done so.

And PTI's discussion of the safety record of different types of vehicles is simply an argument that the statute is overinclusive in its application to PTI's six-passenger vehicles. (*See* PTI Br. 51-52). But as noted, the General Assembly can decide to protect the health, safety, and welfare of the State's citizens by enacting statutes that are either underinclusive or overinclusive. *See Elementary Sch. Dist. 159*, 221 Ill. 2d at 141, 151-52. Whether six-passenger vehicles are more dangerous than minivans or buses or some other type of vehicle, or whether safety depends on training and licensing, are issues not required to be based on "evidence or empirical data." *Big Sky Excavating, Inc.*, 217 Ill. 2d at 240. Likewise, PTI's argument that section 8-101(c) could have been better crafted as a "general law" ignores the General Assembly's ability to solve problems one step at a time. *See Crusius ex rel. Taxpayers of State of Ill.*, 348 Ill. App. 3d at 59; (PTI Br. 41-43). And the mere problem of a law being "ill-conceived does not create a constitutional problem for the courts to fix." *Piccioli*, 2019 IL 122905, ¶ 20.

Further, PTI's alarms about railroad labor unions lobbying to pass section 8-101(c), and its assertion that "this onerous railroad-union-sponsored special amendment" originates from "legislators' obvious pro-union motivation," are misleading and fail to show the law is arbitrary. (*See* PTI Br. 42, 45; *see also id.* at 47). When a statute is clear and unambiguous, courts interpret its language "without resort to further aids of statutory construction," including legislative history. *People v. Jones*, 223 Ill. 2d 569, 580-81 (2006).

Nor does any facet of special legislation analysis invite an assessment of legislators' decisions and discretion, given what PTI critiques as "railroad union lobbyists [who] proved to be inventive tacticians." (PTI Br. at 47; *see also id*. at 54 (General Assembly motivated only to "reward determined union lobbying"). The makings of legislation are not the issue in special legislation considerations. *See Moline Sch. Dist. No. 40 Bd. of Educ.*, 2016 IL 119704, ¶ 67 (Theis, J., dissenting) (party's suggestion "that there is something untoward about a political branch using political considerations to frame legislation seems naïve") (citing *Mercy Crystal Lake Hosp. & Med. Ctr. v. Ill. Health Facilities & Serv. Review Bd.*, 2016 IL App (3d) 130947, ¶ 34).

PTI's theories on legislative history and commentary on legislative processes are therefore irrelevant despite its claim that reviewing courts "should undertake a 'comprehensive review' of the statute's legislative history to determine the General Assembly's intent" when that motivation is not

obvious. (PTI Br. at 45 (citing *Allen*, 208 Ill. 2d at 25)). But in *Allen*, this Court made the caveat that such detailed considerations of legislative history must occur when "the resolution . . . so requires" — that is, when *no* rational reason can be conjured. 208 Ill. 2d at 25. That is not the case here, though, given the numerous rational reasons put forth by the Secretary in this brief.

Nor was delving into legislative history required in this Court's most recent special legislation decision. Indeed, in *Piccioli*, this Court emphasized that "[u]nder the rational basis test, *the court may hypothesize reasons for the legislation, even if the reasoning advanced did not motivate the legislative action.*" 2019 IL 122905, ¶ 20 (emphasis in original). Even so, PTI irrelevantly invokes an Attorney General Opinion Letter to show that 13 years ago, the Attorney General in a different case acknowledged the approach of *Allen*. (PTI Br. at 46). But "Attorney General opinions are not binding on the courts." *Burris v. White* 232 Ill. 2d 1, 8 (2009).

Detouring into federal preemption law, PTI argues the "politics" of section 8-101(c) "has much in common" with legislation criticized in *520 Mich. Ave. Assocs., Ltd. v. Devine*, 433 F.3d 961 (7th Cir. 2006). (PTI Br. at 47). Despite this blanket statement, PTI fails to explain what the two have in common. Specifically, while PTI explains that *Devine* involved legislation that "conflicted with and was preempted by federal labor laws" (*id.*), it does not establish that section 8-101(c) does the same. Moreover, *Devine* is factually distinct because it involved criminalizing under state law conduct otherwise

permitted under federal law. 433 F.3d at 965. PTI makes no argument — nor could it — that section 8-101(c) is "so starkly incompatible" with federal law as held in *Devine*. *Id*.

All this aside, PTI's overlooks section 8-101(c)'s application to employees of *any* entity transported for work purposes by contract carriers, not just union employees like Carmichael. (*See* PTI Br. at 47). Contrary to PTI's representations, the statute explicitly applies to contract carriers "transporting employees, *including but not limited to* railroad employees." 625 ILCS 5/8-101(c) (2016) (emphasis added). That means that the law firm moving nonunionized attorneys and support staff between urban commuter train stations and the firm office sites also is covered and required to comply, if it chooses to switch from motor coaches to multiple, smaller vehicles that seat up to 15 passengers.

And the fact that only rail carriers working with contract carriers must verify the existence of the required minimum insurance coverage does not make the provision improper. (PTI Br. at 40, 48). To be sure, "not every provision in a law must promote all of the law's objectives." *Crusius II*, 216 Ill. 2d at 332; *see also Crusius ex rel. Taxpayers of State of Ill.*, 348 Ill. App. 3d at 59 (General Assembly need not solve every conceivable problem when it seeks to address a subset of problems). In future iterations of section 8-101(c), other entities may be required to furnish proof of coverage. *See Anderson*, 148 Ill. 2d at 31 (General Assembly "may proceed one step at a time").

Finally, because PTI's special legislation challenge failed in the circuit court, it could not prevail on its argument that section 8-101(c) of the Code violates the constitutional guarantee of equal protection. *See Moline Sch. Dist. No. 40 Bd. of Educ.*, 2016 IL 119704, ¶ 24. Accordingly, the circuit court correctly concluded that section 8-101(c) of the Code was neither unconstitutional special legislation nor a violation of equal protection.

CONCLUSION

For the foregoing reasons, Intervenor-Appellant Illinois Secretary of State Jesse White requests that this Court dismiss this appeal, find that the petition for leave to appeal was improvidently granted, and vacate the Appellate Court's decision. In the alternative, if this Court determines that jurisdiction exists, it should affirm the circuit court's order granting the Secretary's motion to dismiss PTI's counterclaim.

Respectfully submitted,

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April 24, 2019

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) 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 14,490 words.

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CERTIFICATE OF FILING AND SERVICE

I certify that on April 24, 2019, I electronically filed the foregoing Brief of Intervenor-Appellant Illinois Secretary of State Jesse White with the Clerk of the Court for the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system:

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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