No. 126605

IN THE
SUPREME COURT OF ILLINOIS

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| JANE DOE,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>LYFT, INC., ANGELO McCOY, STERLING INFOSYSTEMS, INC., d/b/a STERLING TALENT SOLUTIONS,<br><br>Defendants-Appellees. | ) | On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-19-1328,<br><br>There Heard on Appeal from the Circuit Court of Cook County, Illinois, County Department, Law Division, No. 17-L-11355.<br><br>The Honorable Patricia O'Brien Sheahan Judge Presiding |

# BRIEF OF CHAMBER OF COMMERCE OF THE UNITED STATES AND ILLINOIS CHAMBER OF COMMERCE AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE LYFT, INC.

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## INTEREST OF THE AMICI CURIAE

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

One of the Chamber's policy priorities is protecting innovation in the "gig economy" against policies that threaten economic growth in this important new area of commerce. *See* U.S. Chamber of Commerce, *Ready, Fire, Aim: How State Regulators Are Threatening the Gig Economy and Millions of Workers and Consumers* (Jan. 2020).[1] Gig economy companies such as Lyft are a significant driver of economic innovation. In addition to its policy advocacy, the Chamber is likewise involved in litigating issues concerning state regulation of the gig economy. *See, e.g.*, *Chamber of Commerce of the United States of America v. City of Seattle*, 890 F. 3d 769 (9th Cir. 2018).

The Illinois Chamber of Commerce (the "Illinois Chamber") is a non-profit organization comprised of businesses and organizations of all types and

[1] Available at https://www.uschamber.com/report/ready-fire-aim-how-state-regulators-are-threatening-the-gig-economy-and-millions-of-workers.



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sizes across the State of Illinois. The Illinois Chamber is the unifying voice of the varied Illinois business community and represents businesses in all components of Illinois' economy, including mining, manufacturing, construction, transportation, utilities, finance and banking, insurance, gambling, real estate, professional services, local chambers of commerce, and other trade groups and membership organizations. Members include many small to mid-sized businesses as well as large international companies headquartered in Illinois.

The Illinois Chamber works collaboratively with trade organizations on specific policy issues or in specific areas of activity. It is dedicated to strengthening Illinois' business climate and economy for job creators. Its mission focuses on representing the business community at the state level by working with state representatives, senators, and the Governor's Office to advocate for Illinois businesses. Accordingly, the Illinois Chamber provides these businesses with a voice as it works with state lawmakers to make business-related policy decisions.

In addition to its work with state legislators, the Illinois Chamber also operates an Amicus Briefs Program to bring attention to specific cases and provide additional information for the Court to consider. Over the last few years, the Illinois Chamber has appeared before this Court in matters of significant importance to its members, including the proper scope of actions brought under the Illinois Biometric Information Privacy Act, the appropriate



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role and compensation of relators in Illinois false claims actions, limitations on a municipality's authority to tax, and an employee's fiduciary duty of loyalty to his or her employer.

Given the broad membership of the *amici*, which includes not only gig-economy companies across personal transportation, delivery of products and goods, and personal services industries, but also many businesses both large and small that benefit from their innovative business models, the *amici* focus this brief solely on whether Section 25(e) of the Transportation Network Provider Act (the "Act"), 625 ILCS 57/25(e) (2020), violates the special legislation provision of the Illinois Constitution, ILL. CONST. (1970) art. IV, § 13. *Amici*'s membership has a strong interest in a rule of law that preserves the appropriate degree of deference to legislative classifications while also permitting judicial intervention when the legislature acts irrationally.

## ARGUMENT

### I. INTRODUCTION

In this appeal, there is no dispute that Defendant Angelo McCoy committed a horrific crime against Plaintiff. He is awaiting trial for that crime, and if convicted could be sentenced to life in prison. He also faces a civil action brought by Plaintiff. He should be held fully accountable for his actions in those criminal and civil proceedings.

Plaintiff also seeks to hold Defendant Lyft, Inc. vicariously liable for Mr. McCoy's criminal conduct because Lyft provided the ride-referral platform (via the Lyft smartphone app) that connected Plaintiff to McCoy for a ride. Plaintiff



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contends that Lyft and all other transportation network companies ("TNCs") should be subject to the same kind of vicarious liability as "common carriers" under Illinois law, even though Section 25(e) of the Act plainly declares that TNCs "are not common carriers." 625 ILCS 57/25(e). Lyft's brief explains why Illinois law does not allow Section 25(e) to be set aside in any of the ways that Plaintiff suggests.

Among other things, Plaintiff argues that Section 25(e) is unconstitutional special legislation because it subjects TNCs such as Lyft to a different regulatory regime than taxis. Acknowledging that its special legislation argument against Section 25(e) fails under the rational basis test, Plaintiff now contends that this Court should change its decades-old jurisprudence which holds unequivocally that where a law does not involve a fundamental right or suspect category, the same rational basis scrutiny applies to special legislation challenges as to claims under the equal protection clause and adopt a new, more demanding test that would ignore both the general rules of *stare decisis* and basic separation-of-powers principles.

The Court should reject Plaintiff's special legislation theory. *First*, there is no reason for the Court to abandon a long and unbroken line of authority and craft a new legal standard for special legislation challenges. The rational basis test is well grounded in separation of powers principles requiring the judiciary to give due and substantial deference to legislative classifications that do not involve fundamental rights or suspect classifications. The General



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Assembly is routinely required to make classifications between groups when it enacts laws. The wisdom of those choices is not the subject for searching review by the judicial branch the General Assembly's decisions need only be rational.

*Second*, Section 25(e) is rationally related to the legitimate government interests of encouraging economic development and technological innovation. The business innovations brought about by TNCs and other gig-economy companies provide important benefits for workers, consumers, and the economy as a whole. The State reasonably sought to balance the need to regulate the new and growing market that TNCs created through their technological innovation with the desire to ensure that the market continues to flourish and provides benefits to Illinois residents. The State did not leave TNCs unregulated: the Act is a comprehensive scheme that imposes numerous obligations on TNCs. In Section 25(e), the State balanced those obligations by protecting TNCs from the possibility of vicarious liability for acts outside the scope of their drivers' employment, the same way almost all other businesses are protected by the general rule against vicarious liability. Plaintiff contests the wisdom of the General Assembly's policy choices underlying Section 25(e), but her complaints are properly addressed to the legislature.

## II. The Rational Basis Test Applies To Plaintiffs' Special Legislation Challenge.

The special legislation provision of the Illinois Constitution states: "The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable



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shall be a matter for judicial determination." ILL. CONST. (1970) art. IV, § 13. This Court has repeatedly held that special legislation challenges that do not involve fundamental rights or a suspect classification should be resolved using the rational basis test. *See, e.g.*, *Gen. Motors Corp. v. State Motor Vehicle Rev. Bd.*, 224 Ill. 2d 1, 30-31 (2007). Under that test, the Court "may ask whether the statutory classification is rationally related to a legitimate state interest." *Piccioli v. Bd. of Trs. of Teachers' Ret. Sys.*, 2019 IL 122905, ¶ 18. The classification "does not need to be supported by evidence or empirical data," and the court "'may hypothesize reasons for the legislation, *even if the reasoning advanced did not motivate the legislative action*.'" *Id*. at 20 (quoting *People ex rel. Lumpkin v. Cassidy*, 184 Ill. 2d 117, 124 (1998), emphasis in *Piccioli*). "[I]f this court can reasonably conceive of any set of facts that justify a distinction between the class the statute benefits and the class outside its scope, we will uphold the statute." *Gen Motors Corp.*, 224 Ill. 2d at 31.

The predicate for Plaintiff's special legislation argument is her belief that this Court should abandon long-standing Illinois law and adopt a more searching scrutiny than the rational basis test. In support, Plaintiff paints an inaccurate picture of the history of the special legislation provision and the deference that this Court affords legislative classifications. Plaintiff's argument fails because, as this Court has recognized, all legislative classifications that do not involve a fundamental right or suspect classification are entitled to substantial deference, whether analyzed under the special



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legislation prohibition, the equal protection clause, or any other constitutional provision. And in the circumstances of this case, there is no "special justif[ication]," such as a "clear showing of good cause or some other compelling rationale," that would justify departing from longstanding precedent and creating a new rule for special legislation challenges. *People ex rel. Dep't of Human Rights v. Oakridge Healthcare Ctr., LLC*, 2020 IL 124753, ¶ 21.

### A. The prohibition on special legislation has always been understood not to undermine the legislative prerogative to enact laws that make classifications so long as those laws have a rational basis.

Contrary to Plaintiff's contention, application of the rational basis test is not the result of a historical accident. A special legislation clause was first included in the Illinois Constitution of 1870. ILL. CONST. (1870) art. IV, § 22. By 1870, "the problem of local and special legislation had become alarming." G.D. Braden & R.G. Cohn, *The Illinois Constitution: An Annotated & Comparative Analysis* 204 (1969). As a result of the then-rampant legislative practice of passing laws applying to one locality or conferring a benefit on one private interest, "[t]he total mass of special legislation [was] indicated in the increasing volume of state laws," which between 1857 and 1869 more than doubled from 1,550 to 3,350 pages, 1,850 of which were local laws relating to "cities, towns, and schools." *Id*. (internal quotation marks omitted). The public viewed the expansion of local and special legislation as a sign of legislative corruption: "Much of the Nineteenth Century crusade against special legislation was directed at the effective 'sale' of permanent privileges and the



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corruption that 'greased' the way for such 'sales.'" *Id.* at 208. To address the problem, the 1870 Constitution provided that "[t]he General Assembly shall not pass local or special laws in any of the" 23 enumerated categories. ILL. CONST. (1870) art. IV, § 22. After the last category, the framers included a catch-all provision, resembling the current special legislation provision, stating that "[i]n all other cases where a general law can be made applicable, no special law shall be enacted." *Id*.

Braden & Cohn observed that, by 1906, at least one scholar had derived certain principles from the ban on special and local legislation, including that the law must be "rational." Braden & Cohn, *supra*, at 211 (discussing Albert M. Kales, "Special Legislation as Defined in the Illinois Cases," 1 Ill. L. Rev. 63, 66-67 (1906)). From the outset, then, legislative classifications reviewed under the special legislative prohibition needed only to have a rational basis to survive challenge.

The 1870 Constitution did not contain an equal protection clause, so in the following century Illinois courts interpreted the last enumerated provision of the special legislation clause prohibiting laws "[g]ranting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever," ILL. CONST. (1870) art. IV, § 22 to operate as the state constitutional guarantee of equal protection. This Court explained that the provision "supplements the equal-protection clause of the fourteenth amendment to the Federal constitution and prevents the enlargement of the



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rights of one or more persons in discrimination against the rights of others." *Schuman v. Chicago Transit Auth.*, 407 Ill. 313, 317 (1950). Under this provision, "[u]nless the legislative action is clearly unreasonable and there is no legitimate reason for the law which would not require with equal force its extension to others whom it leaves untouched, the courts do not interfere with the legislative judgment." *Id*. at 318.

By the 1970 Illinois Constitutional Convention, the original purpose of many of the enumerated prohibitions of the special legislation clause "was lost sight of long ago." Braden & Cohn, *supra*, at 221. In their analysis for the 1970 Illinois Constitution Study Commission, Braden and Cohn recommended that the new state constitution include an explicit equal protection clause ("to try to entice the courts away from using Section 22 as a substitute for or supplement to equal protection and due process" because those are "fundamental rights that belong in the bill of rights") and separately retain the prohibition against special legislation. *Id*. at 225-26; *see Anderson v. Wagner*, 79 Ill. 2d 295, 313-14 (1979) (describing Braden & Cohn's analysis as "most helpful"); *see also Ill. Polygraph Soc'y v. Pellicano*, 83 Ill. 2d 130, 137-38 (1980) (explaining that the special legislation prohibition guards against laws that discriminate "in favor of a select group" and the equal protection clause prohibits "arbitrary and invidious discrimination against" a person or class). Specifically, Braden and Cohn recommended adoption of the model state constitution's special legislation provision. Braden & Cohn, *supra*, at 226. The



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framers followed the recommendation and adopted the model provision almost verbatim. *Anderson*, 79 Ill. 2d at 314.

Both the model provision and the version adopted in the 1970 Constitution contained language clarifying that "[w]hether a general law is or can be made applicable shall be a matter for judicial determination." Braden & Cohn, *supra*, at 224; ILL. CONST. (1970) art. IV, § 13. Braden and Cohn argued that inclusion of this sentence was important because courts had construed the admonition in the 1870 Constitution that "[i]n all other cases where a general law can be made applicable, no special law shall be enacted," to be a matter of legislative prerogative that was not subject to any judicial review. Braden & Cohn, *supra*, at 222. In other words, if a law did not fall within one of the enumerated prohibited categories, the court would not consider a special legislation challenge. *Id.*

Shortly after the 1970 Constitution was adopted, this Court recognized that the new special legislation clause "specifically rejects the rule enunciated in a long line of decisions of this court that whether a general law can be made applicable is for the legislature to determine and specifically provides that 'it shall be a matter for judicial determination.'" *Bridgewater v. Hotz*, 51 Ill. 2d 103, 110 (1972) (cleaned up and quoting ILL. CONST. (1970) art. IV, § 13). But this Court made clear that "although the scope of judicial review of legislation is to that extent enlarged, section 13 requires no change in our definition of when a law is 'general and uniform,' 'special,' or 'local.'" *Id.*; *see also Anderson*,



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79 Ill. 2d at 315. Subsequently, the Court reiterated that "though section 13 of article IV of the Constitution of 1970 gives the court enlarged judicial review in the narrow area of 'real' special legislation, traditional deference is given to legislative classification in that area as well as when the court is considering equal protection questions in the guise of special legislation challenges." *S. Bloom, Inc. v. Mahin*, 61 Ill. 2d 70, 77 (1975). Thus, though the *scope* of judicial review under the provision was "enlarged," this Court made clear that the *rigor* of that review remained the same, consistent with "the traditional equal protection tests, tests which this court had used prior to the 1970 Constitution." *Anderson*, 79 Ill. 2d at 315.

### B. Public policy supports continued adherence to the rational basis test generally used for special legislation challenges.

In addition to this strong constitutional basis for continued application of the rational basis test to special legislation challenges, good policy supports adhering to continued use of the test here. *See Oakridge Healthcare Ctr.,* 2020 IL 124753, ¶ 21. The regulated business community generally is best served by a stable regulatory environment, which allows businesses to rely on existing laws and plan their operations accordingly. Departure from rational basis scrutiny here would risk creating a tumultuous and de-stabilized environment in which businesses could not rely on legislative enactments to the same extent as they can now. The uncertainty created by such a situation could make the regulated environment less predictable and accordingly impede business development, investment, and innovation.



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### C. Plaintiff ignores the deference to legislative judgments required by separation of powers principles.

In arguing for more searching review under the special legislation clause, Plaintiff not only misunderstands the relevant history and disregards the doctrine of *stare decisis*, but also ignores the important separation of powers principles that require deference to legislative classifications. *See Roselle Police Pension Bd. v. Vill. of Roselle*, 232 Ill. 2d 546, 557 (2009) ("We do not sit as a superlegislature to weigh the wisdom of legislation nor to decide whether the policy it expresses offends the public welfare." (internal quotation marks omitted)); *Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill. 2d 218, 260 (2010) (Karmeier, J., concurring in part) ("For us to second-guess the wisdom of legislative determinations would, in fact, be prohibited by article II, section 1, of the Illinois Constitution of 1970, which expressly states that '[n]o branch shall exercise powers properly belonging to another.'").

Plaintiff surmises that "the prohibition against special legislation poses concerns larger than those presented in the typical constitutional challenge." Pl. Br. 35. Plaintiff's effort to elevate the special legislation clause above all others, including the guarantees of freedom of speech, equal protection, and due process, is apparently based on her view that the special legislation provision is the "one provision in the legislative articles that specifically limits the lawmaking power of the General Assembly." *Id.* (internal quotation marks omitted). The reason for the provision's express reference to judicial scrutiny has already been explained: it was necessary to overrule the prior court-made



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rule of judicial non-intervention. But, as this Court has repeatedly stated, that discrete "enlargement" of the judiciary's role leaves traditional legislative deference as manifested in the rational basis test intact. *Anderson*, 79 Ill. 2d at 314-15; *S. Bloom*, 61 Ill. 2d at 77; *Bridgewater*, 51 Ill. 2d at 110-11.

Plaintiff's assertion (at 35) that the special legislation provision "provides a vital check on the lawmaking process" is not wrong, but it does not support her claim that something more than rational basis scrutiny should apply. The equal protection and due process clauses, for instance, also provide "vital checks" on the lawmaking process, but the analyses under those provisions still honor the legislature's general authority to make judgments and classifications. *See In re Estate of Jolliff*, 199 Ill. 2d 510, 519 (2002) ("The legislature enjoys broad discretion in making statutory classifications and the special legislation clause does not prohibit all classifications, only arbitrary ones."). Therefore, legislative deference and the rational basis test apply to "all cases involving classifications" that do not involve fundamental rights or suspect categories, whether the claims are brought under the equal protection clause or the special legislation clause. *Grasse v. Dealer's Transport Co.*, 412 Ill. 179, 193-94 (1952).

Plaintiff also argues that "[r]ational basis review is, on its face, inconsistent with the purpose of the special legislation clause" because the clause is "designed to suppress legislative favoritism." Pl. Br. 37. But so is the equal protection clause, as one example, and there is no dispute that the



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rational basis test applies to equal protection challenges that do not involve fundamental rights or suspect classifications.

Plaintiff claims that the Court sometimes uses more searching scrutiny despite its repeated statements that it applies the rational basis test to special legislation challenges because it sometimes examines a law's legislative history. Pl. Br. 40. But the Court's occasional examination of legislative history is not inconsistent with the rational basis test the Court may look to legislative history to inform its analysis, but it is not required to do so. And, if the Court does not find a rational basis for the law in that history, it still may not invalidate the law unless the Court is unable to hypothesize any legitimate reasons for the legislation, "'*even if the reasoning did not motivate the legislative action*.'" *Piccioli*, 2019 IL 122905, ¶ 20 (quoting *People ex rel. Lumpkin v. Cassidy*, 184 Ill. 2d 117, 124 (1998), emphasis in *Piccioli*).

The cases Plaintiff cites do not say otherwise. Rather, *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12, 25 (2003), *Unzicker v. Kraft Food Ingredients Corp*., 203 Ill. 2d 64, 86 (2002), *Jolliff*, 199 Ill. 2d at 520, and *Grasse*, 412 Ill. at 194, all made clear that the rational basis test applies to special legislation challenges. The Court did not state in any of those cases that it was required to consult the legislative history, nor did the Court contradict the rule that, under the rational basis test, the Court may invalidate a law *only* if it cannot hypothesize a set of facts to support it, regardless of the legislature's own statements. *Piccioli*, 2019 IL 122905, ¶ 20.



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Finally, Plaintiff cites this Court's statement that the special legislation clause "supplements" the equal protection clause and queries that if one supplements the other, "how can their tests for passing constitutional muster be identical? Why would the framers of the 1970 Constitution retain the special legislation clause if they intended for it to be perfectly coextensive with, and offer no more protection than, the equal protection clause?" Pl. Br. 40-41. The framers obviously did not intend the equal protection and special legislation clauses to be identical: although they "cover much of the same terrain, they are not duplicates." *Grace v. Howlett*, 51 Ill. 2d 478, 487 (1972); *see also Ill. Polygraph Soc'y*, 83 Ill. 2d at 137-38; Braden & Cohn, *supra*, at 225-26. Indeed, as we explained above, the equal protection clause was adopted in part to ground equal protection more specifically in the 1970 Constitution. Regardless, the rights protected by both provisions are similar under the 1870 Constitution, part of the special legislation provision was construed to operate as a *de facto* equal protection clause and both provisions permit the General Assembly to make legislative classifications that are equally deserving of deference. *See Vill. of Chatham v. Cty. of Sangamon*, 216 Ill. 2d 402, 417 (2005) ("Like the equal protection guarantee, the special legislation provision of our constitution is intended to prevent arbitrary legislative classifications.").

Plaintiff's arguments do not make the compelling case that is required to depart from this Court's longstanding application of the rational basis test



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to special legislation challenges, consistent with established Illinois constitutional principles. *See Oakridge Healthcare Ctr.*, 2020 IL 124753, ¶ 21.

## III. Section 25(e) Is Not Special Legislation.

The General Assembly's decision to distinguish between transportation network companies and taxis in Section 25(e) and elsewhere in the Act does not arbitrarily discriminate in favor of TNCs. Rather, there is an abundantly rational basis for the legislative classification. TNCs and taxis operate on fundamentally different business models, and the General Assembly could reasonably decide to foster economic development of the TNC model by declaring that the standard common law rule against vicarious liability should not apply to TNCs.

The special legislation inquiry has two parts. First, the Court must determine whether the law "discriminates in favor of a select group and against a similarly situated group." *Piccioli*, 2019 IL 122905, ¶ 18. "Second, if the classification does so discriminate, [the Court] must determine whether the classification is arbitrary." *Id.* As discussed, where no fundamental rights or suspect classifications are at issue, the Court applies the rational basis test to determine if a classification is arbitrary. *Id.* at ¶ 20. Under that test, the legislation will be upheld if the statutory classification is rationally related to a legitimate state interest. *Id*. Here, even assuming that the law discriminates in favor of a select group and against a similarly situated group, any such classification satisfies the rational basis test.



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### A. Section 25(e) serves legitimate state and public interests of promoting technological innovation and economic development.

Section 25(e)'s classification of TNCs or TNC drivers as outside the definition of "common carriers, contract carriers, or motor carriers, as defined by applicable State law" is rationally related to legitimate state interests. 625 ILCS 57/25(e). The General Assembly is permitted to enact legislation with the goal of "assisting economic development" as well as "generating economic benefits for the state." *Crusius v. Ill. Gaming Bd.*, 216 Ill. 2d 315, 327 (2005). Additionally, promotion of technological innovation is a legitimate state interest the public welfare has unquestionably benefitted from advances in technology. *See, e.g.*, *Abrasic 90 Inc. v. Weldcote Metals, Inc.*, 364 F. Supp. 3d 888, 909 (N.D. Ill. 2019) (recognizing legitimate public interest in "encourage[ment of] innovation and development"); *Lisle Corp. v. A.J. Mfg. Co.*, 2004 WL 765872, at *6 (N.D. Ill. 2004) (recognizing that "the public interest in promoting invention is strong").

Section 25(e) serves precisely those interests by encouraging the establishment and growth of a TNC sector that has enabled more workers to engage in the personal transportation industry and allowed more consumers access to transportation or delivery services than previously available. Imposing common carrier liability on TNCs could have hampered those developments and prevented the State from enjoying the significant benefits that the gig economy offers to workers, consumers, and small businesses alike,



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including increased employment, convenience, access to services, and operational flexibility.

TNCs like Lyft and Uber have changed how many people travel and work in several significant ways. Those companies provide an innovative digital ride-referral mobile application that connects independent drivers with individual riders who need personal transportation. This represents a dramatic improvement over previous ways personal transportation companies operated and riders and drivers connected, which has helped push traditional providers to offer similar services.

Unlike taxis, for instance, TNCs are part of what is colloquially known as the "sharing economy" or the "gig economy." *See* John O. McGinnis, *The Sharing Economy as an Equalizing Economy*, 94 Notre Dame L. Rev. 329, 330 (2018). The gig economy is best defined as "the one-to-one exchange of goods and services between service providers and end-market customers facilitated by virtual-marketplace companies (or 'platform holders')." U.S. Chamber, *Ready, Fire, Aim* at 11. "[T]he work almost always involves a triangular relationship between the service provider, the platform holder, and the customer" in which "[t]he service provider … sign[s] up through the platform holder's system and convey[s] a willingness to provide a type of service[,] the customer … signs up and indicates a desire to receive the service[,] [and] [t]he platform holder then matches the worker to the customer and in exchange keeps a share of the customer's payment." *Id*. at 11-12.



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These companies operate in an entirely different way than traditional common carriers. Companies such as Lyft and Uber are part of a sector of innovative businesses that have harnessed technological revolutions in the internet, GPS, smartphones, and tablet computers to create new virtual marketplaces for services — in this instance, personal transportation services — that previously did not exist. By virtue of the applications (apps) they have created, they have dramatically increased the flexibility of independent drivers to conduct business where, when, and as much or as little as they choose in a variety of business enterprises — transporting passengers, performing delivery services, or other work — with as many (or as few) different entities or customers as they wish. Their apps also facilitate the more efficient direct exchange of goods and services between providers (such as a driver with a car) and a consumer (who needs to get from point A to point B, or who may want to order food for delivery).

TNCs enable more workers to participate in the gig economy, and those workers "span the full range of ages, skill levels, and income brackets." McKinsey Global Institute, *Independent Work: Choice, Necessity, and the Gig Economy* at 41 (2016). Not only is the "[i]ndependent work" offered by the gig economy "common in construction trades, household and personal services, and transportation," but it is also "preferred by many professionals such as doctors, therapists, lawyers, accountants, designers, and writers." *Id*. What is more, most workers who "go this route [do it] as a matter of preference rather



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than necessity." *Id*. What the sharing economy tends to attract most of all are workers seeking part-time work. *See* U.S. Chamber, *Ready, Fire, Aim* at 17.

This is an important feature of the sharing economy, not a defect. Most of all, the gig economy, including the TNC sector, increases labor force participation and hours worked for the underemployed. McKinsey, *Independent Work* at 84. It also provides a means for the unemployed to earn an income. *Id.* at 85-86. Additionally, "[h]aving this kind of alternative readily available is critical for the millions of workers who may have traditional jobs but are in precarious financial circumstances." *Id*. at 85. This sort of "moonlighting" fills an important economic gap for millions of Americans. *See* U.S. Chamber, *Ready, Fire, Aim* at 14.

Indeed, the data show that a key benefit to the gig economy is that it "enables people to specialize in doing what they do best and raises their engagement … mak[ing] them more productive, both through better skill matching of the right person for the right job, and higher employee engagement." McKinsey, *Independent Work* at 87. By not having set hours, a worker "enjoys the ability to work when and where she wants. She can choose which jobs to take and can work on her own schedule." U.S. Chamber, *Ready, Fire, Aim* at 12. "In survey after survey, gig workers report that the primary benefit of gig work is flexibility. They gravitate to gig work because it allows them to make their own schedules and choose their own projects." *Id*. at 36. Moreover, the lack of exclusivity associated with traditional employment



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means that a worker "can use multiple platforms simultaneously." *Id*. at 12. For example, a worker might "monitor both Lyft and Uber to find the most desirable ride requests" or "monitor multiple platforms for different types of services: a food-delivery platform to pick up an initial gig and a ride-hailing platform to make some extra money on the way back." *Id*.

In the end, digital on-demand platforms have provided consumers with expanded choice, access, and convenience. McKinsey, *Independent Work* at 88. For example, "[d]igitally enabled services are providing consumers with access to services that were once inconvenient to obtain or that may not even have existed before." *Id*. at 87. And "[a] small but growing share of [the sharing economy] involves renting out assets," such as vehicles, which "improve[s] capital productivity as underutilized assets and spare capacity are put to work[;] digital platforms improve this capability by adding detailed, real-time information that can make a step change in utilization." *Id*. at 86. Additionally, there are environmental benefits to a consumer requesting a car when the consumer needs one, rather than owning one. *The Rise of the Sharing Economy*, The Economist (Mar. 9, 2013).[2]

The Federal Trade Commission has acknowledged that the consumer benefits from access to TNCs include "providing customers with new ways to more easily locate, arrange, and pay for passenger motor vehicle transportation services," more efficiently allocating resources, helping to "meet

[2] Available at https://www.economist.com/news/leaders/21573104-internet-everything-hire-rise-sharing-economy.



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unmet demand for passenger motor vehicle transportation services," and "improv[ing] service in traditionally underserved areas." Federal Trade Commission Comments on Chicago Proposed Ordinance O2014-1367, at 3 (Apr. 15, 2014).[3]

Companies like TNCs have provided significant advancements in the way people work, get around town, and receive deliveries. The General Assembly could conceivably determine that the public benefits from the advancements and services offered by TNCs are worth nurturing, and the legislature did not want potential exposure to vicarious liability associated with traditional common carriers a risk that, as a general rule, is not shared by other companies, including other gig economy businesses to stifle TNCs from providing those benefits.

Plaintiff argues that Section 25(e) is "contrary to the stated purpose" of the Act. Pl. Br. 43. According to Plaintiff, "courts look to the stated purpose of the legislation and consider whether the challenged provision promotes that purpose." *Id*. But that is only partially correct, for courts are also required to "hypothesize reasons for the legislation, even if the reasoning advanced did not motivate the legislative action." *Piccioli*, 2019 IL 122905, ¶ 20. In other words, conformity to the "stated purpose" of the statute is not the entire inquiry.

[3] Available at ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-honorable-brendan-reilly-concerning-chicago-proposed-ordinance-o2014-1367/140421chicagoridesharing.pdf



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Finding no stated purpose to Section 25(e), Plaintiff then argues that Section 25 "on its face" addresses "the 'safety' of passengers." Pl. Br. 43. According to Plaintiff, Section 25(e) "in no way fits within this passenger 'safety' scheme" and "is a total outlier." *Id*. But even if that were true, it would be irrelevant. Section 25(e) does not have to serve the "passenger safety" purpose of the other subparts of that provision it can serve a different (stated or unstated) purpose altogether. It is well-settled that a broad statutory scheme such as the Act "often has multiple purposes whose furtherance involves balancing and compromise by the legislature. For a provision in a law to pass the rational basis test, it does not have to promote all of the law's disparate and potentially conflicting objectives." *Crusius*, 216 Ill. 2d at 329; *see also id*. at 332 ("[N]ot every provision in a law must promote all of the law's objectives.").

Section 25(e) promotes the General Assembly's objective of fostering the growth of innovative and beneficial TNCs by sparing them from the vicarious liability that common carriers potentially face. The General Assembly "[b]alanced … competing policy considerations" in crafting the Act to comprehensively regulate TNCs but also to encourage their growth. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 182 (2008). Whether the Act, including Section 25(e), is "the best means to achieve the desired result" is a matter "left to the legislature, not the courts." *Crusius*, 216 Ill. 2d at 332.



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### B. The classification drawn by the General Assembly is rationally related to the State's goals.

The General Assembly correctly recognized that TNCs are not the same as traditional common carriers such as taxi companies. *See* 625 ILCS 57/25(e) ("nor do they provide taxicab or for-hire vehicle services"); *see also* 625 ILCS 57/5 ("TNC service is not … a street hail service"). As discussed, TNCs have brought important innovations to the personal transportation industry for the operating companies, the drivers, and the consumers. TNCs have done so by being different than traditional common carriers like taxi companies.

Plaintiff tries to obscure key differences between TNCs and traditional common carriers by claiming that Lyft "is a passenger transportation company," as are some companies that fall within the meaning of a common carrier. Pl. Br. 46. Further, Plaintiff argues, rideshare companies like Uber and Lyft "perform the same basic function as taxicabs and while they may use a smartphone app to connect with customers, this is just a new instrument to accomplish the same service that costumers and taxicab dispatchers traditionally performed with voice calls and radios." *Id.*

Plaintiff is incorrect. Taxicabs are frequently hailed by a passenger on the street. Lyft and Uber rides are prohibited from being hailed on the street. A passenger typically has no advanced knowledge of a taxi driver's name, service rating, or estimated time of arrival. A taxicab passenger hailing a cab cannot track the driver's location, change the pick-up point, or reschedule the ride as needed. A taxi passenger does not typically pay for his or her ride



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through an account with the operating company on the company's app; instead they ordinarily must carry cash or a credit card during the ride. Nor can a taxicab passenger generally text or talk to their driver before arrival or easily decline a ride before getting into the car upon learning of the driver's rating. A Lyft or Uber rider has access to all that information and the ability to do all those things.

The relationships between the riders and the companies and the types of services offered even if they fit under the general rubric of "personal transportation" are thus profoundly different. Plaintiff downplays the use of apps to schedule rides with Lyft or Uber, but those apps are a key innovation that has changed the type and nature of the service provided to consumers. And to the extent that taxicab companies have recently introduced features resembling those traditionally available only to TNC riders, those changes are the result of the growth of the TNC sector, which has been fostered by the careful balance struck by the Act.

TNCs and taxicabs are different from the driver's perspective, too. A Lyft driver may simultaneously operate on multiple platforms, toggling between the Lyft and Uber app, delivering meals for Postmates or Doordash, and delivering packages for Amazon and Walmart. This is something that common carrier drivers could not (and did not) do before the innovations of TNCs. Further, the TNC driver usually uses his or her own vehicle, as opposed to a vehicle owned by the company, as is often the case with taxicab services. And



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the TNC driver has greater flexibility in choosing how much and when to work, which is a characteristic of workers in the gig economy and not of traditional common carriers. Thus, Plaintiff's insistence that "[t]he point is that Lyft sells rides" ignores the vast differences in both customer and driver experience offered by TNCs compared to their common carrier competitors.

The sound policy of judicial deference to legislative classifications is especially important in a case such as this involving a new industry that is still developing. Plaintiff asks this Court to forbid the General Assembly from tailoring rules to promote new and innovative businesses and business practices, instead insisting that TNCs be governed by the same rules as their incumbent competitors. Recognizing that the public interest favors the encouragement of innovation and development, that is precisely what the Court should not do in a case involving an emerging and rapidly evolving industry. This is especially true here, where the General Assembly has demonstrated that it is aware of the TNC industry and is willing to engage in comprehensive regulation of that industry to serve the public interest. In the case of an evolving, nascent industry like TNCs, the Court should not tie the hands of the legislature by tethering the new industry to a legacy industry.

The distinction drawn by the General Assembly between TNCs and traditional common carriers thus is reasonable and related to the General Assembly's legitimate goals of fostering economic growth, technological



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innovation, and improved consumer and worker experiences. Plaintiff's special legislation challenge should be rejected.

## CONCLUSION

For the reasons set forth above, the Court should hold that Section 25(e) is not special legislation in violation of the Illinois Constitution.

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Respectfully submitted,

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**Supreme Court Rule 341(c) Certificate of Compliance**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the brief under Rule 342(a) is 27 pages.

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