Case No. 126605

In the Supreme Court of Illinois

JANE DOE,

Plaintiff-Appellant,

v.

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

Defendants-Appellees.

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

APPELLANT'S REPLY BRIEF

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ARGUMENT

I. TNPA Section 25(e) is not a proper immunity provision

Lyft, the Attorney General, and Lyft's *amici*, collectively spend 90 pages of briefing defending the constitutionality of Section 25(e) of the Transportation Network Providers Act ("TNPA"), 625 ILCS 57/25(e), when the first and possibly last issue this Court need address to resolve this appeal concerns something rather less extraordinary: whether Section 25(e) is sufficiently specific to confer immunity on rideshare carriers from vicarious liability claims in the first place.

Lyft's argument is that Section 25(e), which states that "TNCs [rideshare carriers] or TNC drivers are not common carriers," is an implied grant of immunity from vicarious liability. Lyft Br. 22. Specifically, Lyft argues that the common law generally considers sexual assaults committed by a principal's agent to be outside the scope of the *respondeat superior* doctrine, meaning it cannot be held liable for the actions of its agent in attacking Jane. Lyft further argues that although an exception to this rule applies for crimes and intentional torts committed by common carrier agents, Section 25(e) says rideshare carriers are not common carriers, and so the "implication" (Lyft Br. 22) and the "effect" that "flows" from Section 25(e) (Lyft Br. 20), is that rideshare carriers are immune from vicarious liability.

As discussed in Jane's opening brief, the standard this Court has set for abrogating common law rights and remedies is both clear and high. "Common

law rights and remedies remain in full force in this state unless *expressly* repealed by the legislature or modified by court decision. A legislative intent to alter or abrogate the common law must be *plainly* and *clearly* stated." *McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶ 30 (emphasis added). If Lyft is right, and Section 25(e) was meant to be an implied immunity provision, then by its own admission it can hardly be said to be an express, plain, and clearly stated grant of immunity.

This Court explained in *Rush University Medical Center v. Sessions*, 2012 IL 112906, that legislative intent to abrogate common law rights and remedies "will not be presumed from ambiguous or questionable language." *Id.* ¶ 16. Accordingly, "Illinois courts have limited all manner of statutes in derogation of the common law to their express language, in order to effect the least—rather than the most—alteration in the common law." *Id.*

Further, "[t]he implied repeal of the common law is not and has never been favored." *Id.* ¶ 17. "Thus, a statute that does not expressly abrogate the common law will be deemed to have done so only if that is what is necessarily implied from what is expressed." *Id.* (cleaned up). "But in such cases, there must be an irreconcilable repugnancy between the statute and the common law right such that both cannot be carried out into effect." *Id.* "Where the common law rule in question provides greater protection than the statute at issue, but the rule is not inconsistent with the general purpose of the statute, it is better to say that the law was intended to supplement or add to the security furnished

by the rule of the common law rather than to say that it is repugnant to that rule." *Id.*

Here, the text of Section 25(e) does not demand that it be read as an immunity provision. It says nothing about immunity or liability, and Lyft identifies no other instance in which a similarly worded statutory provision was interpreted as an immunity provision. As discussed in Jane's opening brief, this provision could just as easily mean that rideshare carriers need not act like common carriers by agreeing to carry all persons indifferently who may apply for passage. Pl.'s Br. 31. Section 25(e) may reasonably be understood to mean that rideshare carriers are free to deny passage to anyone they choose, provided they do not discriminate on the basis of suspect or quasi-suspect classifications like race, sex, or sexual orientation. *See* 625 ILCS 57/20(b). Lyft even acknowledges that this may be "one effect of the provision." Lyft Br. 21. Section 25(e) may also exist to exempt rideshare carriers from local ordinances requiring they comply with common-carrier licensing requirements like chauffers' licenses for drivers.

Unlike Lyft's broad interpretation of Section 25(e), Jane's narrow reading aligns, or at least does not conflict, with the legislative history of the TNPA and its stated purpose. As discussed below, the TNPA's only stated purpose was the protection of public and passenger safety and wellbeing. Rideshare carrier immunity was never discussed in any capacity. *Infra* 5-10. The complete absence of legislative history discussing Section 25(e), vicarious

liability, and rideshare immunity, lends obvious weight to Jane's interpretation. Surely, if Section 25(e)'s immunity were truly the key to the "balance" of interests Lyft says the TNPA achieved after "extensive" deliberations, one would expect to see at least *some* mention of that vital provision in the legislative record.

Lyft argues that the Court should give Section 25(e) its "fullest" rather than its "narrowest" meaning, citing criminal law and general principles of statutory construction. Lyft Br. 21. This argument is directly contrary to the specific rule of construction laid out in *Rush* and *McIntosh*. It is also a curious argument for Lyft to make given that Lyft denies it is a common carrier, even absent Section 25(e). Lyft Br. 20, n.14. If that is the case, and Lyft's interpretation of Section 25(e) is also correct, then that provision is entirely superfluous.

Illinois common law allows Jane to pursue her common law vicarious liability claims against Lyft. Pl.'s Br. 17-34. As the trial and appellate courts correctly assumed without deciding, but for Section 25(e), rideshare carriers would either be considered common carriers or at least owe the same heightened duty of care to their passengers. A9; A83.[1] That is because the similarities between rideshare carriers and common carriers are manifest, and when the TNPA was passed, Illinois common law allowed even non-common

[1] Jane uses here the same record and appendix conventions used in her opening brief, but adds "LA__" for references to Lyft's appendix.

carriers to be held to the same heightened duty as common carriers, provided they were performing the same function and their passengers surrendered control of their safety to the carrier. Pl.'s Br. 17-34. And, at the very least, Jane pleaded that Lyft is a common carrier. SR4.

There is, in sum, nothing about Section 25(e) that requires it be read as an implied grant of immunity from vicarious liability. And any statute purportedly creating a second-class subset of rape victims by denying them their traditional rights and remedies must be very clear in its intent and meaning. Section 25(e) fails that test.

II. Alternatively, Section 25(e) is unconstitutional special legislation

A. The defense of Section 25(e) mounted by Lyft and its supporters is based on a false narrative of its legislative history

Lyft begins its argument by telling the Court that Section 25(e) is "the product of extensive deliberation," reflecting the legislature's "reasoned judgment" developed over "months of debate." Lyft Br. 3, 10, 16. The Attorney General and Lyft's *amici* follow suit, all to create a narrative supporting the contention that Section 25(e) is the key to a thoughtful balancing between protecting public safety and wellbeing and promoting the growth of the rideshare industry.[2] Given that the entire legislative history of the TNPA, from introduction to passage, spanned fewer than 24 hours, Lyft and its supporters look far beyond its legislative history to make this argument.

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[2] It is perhaps unsurprising that the Attorney General eventually decided to defend the TNPA. After all, he voted for it when he was state senator. LA407.

As Lyft and its supporters tell it, "[t]he TNPA did not begin with Senate Bill 2774." Lyft Br. 11. It rather began a year earlier with the "Ridesharing Arrangements and Consumer Protection Act," House Bill 4075 (SR112-13 (H.B. 4075, 98th General Assembly (Ill. 2014)) ("H.B. 4075"), a bill that never became law due to a governor's veto, but should—they say—nonetheless be considered part and parcel of the legislative history of House Amendment 1 to Senate Bill 2774 ("S.B. 2774")—the TNPA. This narrative frees Lyft and its supporters to interchangeably use throughout their briefs quotations from, and citations to, the legislative histories of both bills. Because the promotion of the rideshare industry was actually considered by the legislature as part of the balance reached in H.B. 4075, conflating the bills allows Lyft and its supporters to argue that was also an aim of the TNPA, and Section 25(e) is thus consistent therewith.

The problem with this narrative and argument is that it is demonstrably false. H.B. 4075 and the TNPA were on opposite sides of the regulatory spectrum and, consequently, their legislative histories cannot reasonably be viewed interchangeably or as part of a continuous whole. The legislative history of the Articles of Confederation and Perpetual Union cannot be credibly described as being part of the legislative history of the Constitution of the United States, although one followed the other and they both addressed the common governance of the states. Similarly, the legislative history at issue in *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 391 (1997), could not be credibly

used as the legislative history at issue in *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217 (2010), although both cases concerned statutory damages caps meant to address a purported litigation crisis in Illinois, and the latter law was essentially a "lighter" version of its predecessor. The same is true here. Although both bills addressed rideshare regulation, H.B. 4075's contents were *radically* different from those of the TNPA.

Where H.B. 4075 would have imposed a comprehensive regulatory regime on the rideshare industry, the TNPA was considerably "lighter" in its regulatory touch. For instance, H.B. 4075 would have defined a "commercial ridesharing arrangement" to *include* taxicab and for-hire vehicles arranged through rideshare applications; that is, taxicabs and other carriers could qualify as rideshares. A195. The TNPA says the opposite. 625 ILCS 57/25(e). H.B. 4075 would also have required rideshare carriers assume liability for passenger injuries, provide liability insurance to drivers, carry commercial liability insurance, carry uninsured and underinsured insurance coverage, list non-owner vehicle drivers as additional insureds, and obtain commercial dispatcher's licenses. LA186-87; LA194-205. The TNPA does none of these things. The bill would have further required full-time rideshare drivers meet commercial vehicle safety standards, have distinctive registration plates, and have chauffeurs' licenses. LA195-205. The TNPA does none of this either.

At least as importantly, the TNPA contains a provision never included or mentioned in connection with H.B. 4075 or House Amendment 1 to S.B.

2774. It is the very provision at the center of this case: Section 25(e), exempting rideshare carriers from common carrier status. If nothing else, that single provision illustrates just how different H.B. 4075 was from the TNPA for, during the debate on H.B. 4075, the bill's sponsor told his legislative colleagues when discussing the chauffeur license requirement that it was "important for the state to know, if you're [rideshare carriers] put in a position *of being a common carrier*, you need to have a different standard of proof than just a regular driver." LA73 (emphasis added). Combined with the absence of anything resembling Section 25(e), this strongly suggests that when H.B. 4075 was passed, the legislature considered rideshare carriers to be common carriers.

Therefore, when Lyft and its supporters so frequently and liberally quote from and cite to legislative debates that occurred before the introduction of the TNPA on December 2, 2014, they are relying on statements and rationales that have little or nothing to do with the TNPA's contents, and especially with Section 25(e). The bills are not interchangeable and bootstrapping the history of one to the other to give misimpressions of legislative intent and deliberation is misleading, even more so given that the legislature never even mentioned Section 25(e) or anything like it. House Amendment 1 to S.B. 2774 was not the "direct successor" of H.B. 4075 (Lyft Br. 15), nor was it "similar to" H.B. 4075 (AG Br. 5), it was rather its polar opposite.

The Attorney General argues that it would be "absurd to pretend" that the legislative history of H.B. 4075 is not part of the legislative history of the TNPA, citing *Scofield v. Board of Education of Community Consolidated School District No. 181*, 411 Ill. 11 (1952), and *Stellar v. Miles*, 17 Ill. App. 2d 435 (3d Dist. 1958), for the proposition that conflating the legislative histories of differing bills is appropriate. AG Br. 26. Neither case supports that statement. Both cases stand for the unremarkable proposition that courts considering the constitutionality of a statute may consider its legislative history and the "surrounding facts and circumstances in connection therewith." *Scofield*, 411 Ill. at 16; *Stellar*, 17 Ill. App. 2d at 440. This is hardly a blessing of the types of liberties Lyft and its supporters take with the history of the TNPA.

The fact remains that nothing in the text of the TNPA says that its aim was to promote the rideshare industry's business interests in Illinois, and the TNPA's sponsor gave only one reason for the bill's need when introducing it for its (only) reading and discussion on the House floor: "to protect our constituent's [*sic*] safety." SR190; A129. When asked by another member to "walk through" the bill's contents, the sponsor referenced only passenger and public safety and wellbeing measures. SR190-91. He made similar statements in committee, where the abbreviated discourse was entirely dominated by the wellbeing issue of insurance coverage, and he said the TNPA was necessary because "we want to make sure that those citizens [outside Chicago] are protected just like Chicagoans are" (a reference to Chicago's ridesharing

ordinance, Chi. Mun. Code 9-115-010 *et seq.*), and passage would "protect Illinoisans." LA222-23. Every provision but Section 25(e) did just that, albeit to a much lesser degree than H.B. 4075 would have done had it not been vetoed. *See* Pl.'s Br. 8-9.

Lyft asserts in this regard that "Plaintiff does not dispute that [the TNPA's] history would suggest a General Assembly motivated, at least in part, by economic-development and transportation-access goals." Lyft Br. 36. To the contrary, Jane vigorously disputes that assertion and her view, unlike Lyft's, is supported by the TNPA's legislative history. When the TNPA was presented to the legislature it had only one stated goal: public and passenger safety and wellbeing. While fleeting references to the prior bill and its objectives were made by one or two other legislators, they were never identified as a motivating reason behind the TNPA generally, or Section 25(e) specifically.

B. Unlike H.B. 4075, the TNPA was a form bill written by rideshare industry lobbyists, not the product of lengthy and considered legislative effort

The truth, as discussed in Jane's opening brief, is that the TNPA was introduced and passed in a matter of hours at the close of the legislative session. Pl.'s Br. 8-11. The bill went through none of the procedures one could associate with thoughtful legislative deliberation and transparency. This shortcut was possible because the constitutional requirements meant to ensure legislative transparency and deliberation were disregarded. Pl.'s Br. 57-60. It was also made possible because the TNPA, particularly Section 25(e), was

simply a form bill shopped around the country with varying degrees of success by rideshare lobbyists to protect rideshare carriers' interests.

Lyft has never denied this fact and it is well illustrated by comparing the TNPA to the *minority* of other states where rideshare companies have obtained similarly favorable regulatory treatment. *See*, *e.g.*, Idaho Code Ann. § 49-3704, eff. April 6, 2015 ("TNCs or TNC drivers are not common carriers as defined [by Idaho law]; they are not motor carriers, nor do they provide taxicab or for-hire vehicle service"); Miss. Code Ann. § 77-8-3, eff. July 1, 2016 (same); W. Va. Code § 17-29-2, eff. July 1, 2016 (same); Tex. Occ. Code § 2402.002, eff. May 29, 2017 (same); Ala. Code § 32-7C-21, eff. July 1, 2018 (same); La. Stat. § 48:2192, eff. July 1, 2019 (same).[3] These and other provisions are nearly and tellingly identical, albeit with local adjustments.

This is relevant not because it necessarily makes Section 25(e) unconstitutional special legislation. For better or worse, bills are often drafted by lobbyists and "[w]e should not be shocked that lobbying influences the legislative process." *Walker v. Agpawa*, 2021 IL 127206, ¶ 33. But this does say something important about the veracity of the narrative and argument that the TNPA, and Section 25(e) specifically, was the result of extensive and careful deliberation by the legislature aimed at achieving a balance between public safety and wellbeing and rideshare carriers' business interests.

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[3] Lyft's *amicus*, TechNet, refers to those 20 states with statutes mirroring the TNPA as being in the national "mainstream." TechNet Br. 5. But 20 of 50 states makes for a decided minority, not mainstream.

The TNPA was presented to the legislature as a ready-made bill that, on its surface, appeared to be entirely about public and passenger safety and wellbeing. And yet in the middle of all its provisions lay a single-sentence poison pill, never discussed by the legislature in any context, which—according to Lyft and its supporters—immunized rideshare carriers from vicarious liability and all but guaranteed that the stated purpose of the bill would take a back seat to rideshare carriers' profits.

C. This Court looks first to the stated purpose of a statute to decide whether it or one of its provisions is unconstitutional special legislation

Jane argued in her opening brief that the most lax approach to rational basis review is an ill fit for evaluating special legislation challenges because the special legislation clause is the "'one provision in the legislative articles that specifically limits the lawmaking power of the General Assembly'" and it was designed to suppress legislative favoritism. Pl.'s Br. 35-42 (quoting *Best*, 179 Ill. 2d at 391, and S. Grove & R. Carlson, *The Legislature*, in Con-Con: Issues for the Illinois Constitutional Convention 101, 103 (1970)). The framers intended the special legislation clause to be "an invitation for the courts to scrutinize legislation." Ann M. Lousin, *The Illinois State Constitution: A Reference Guide* 114 (2010).

Because the exercise of such favoritism inherently involves the exercise of preference, and thus intention, a statute challenged as special legislation should be evaluated—when possible—based on the legislature's stated intent.

This Court's jurisprudence is replete with cases where it not only looked first and only to the stated purpose of a challenged statute or provision, but said that is what it should do when considering special legislation challenges. *See, e.g.*, *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12, 28-33 (2003); *Grasse v. Dealer's Transport Co.*, 412 Ill. 179, 195 (1952); *Bridgewater v. Holz*, 51 Ill. 2d 103, 111 (1972); *Grace v. Howlett*, 51 Ill. 2d 478, 485 (1972); *In re Belmont Fire Protection Dist.*, 111 Ill. 2d 373, 380 (1986); *Best*, 179 Ill. 2d at 394-95. "[A] statutory classification violates the special legislation clause when it is not based upon reasonable differences in kind or situation that are sufficiently related *to the problem targeted by the statute*." *Piccioli v. Bd. of Tr. of Teachers' Retirement Sys.*, 2019 IL 122905, ¶ 55 (Theis, J., dissenting, joined by Garman, J. and Thomas, J.) (emphasis added).

Lyft acknowledges this when it argues that this Court's precedent stands for the proposition that "courts will rely on a stated legislative purpose if one exists," although it qualifies that statement by surmising that this is done because it is "simply … easier than generating hypotheticals." Lyft Br. 32. The Attorney General does the same when describing the cases on which Jane relies, all of which involved situations where this Court looked first and only to the stated purpose of the challenged statute or provision. *See* AG Br. 31. Conspicuously, neither Lyft nor the Attorney General answers what standard controls when the legislature's stated intent contradicts an after-the-fact hypothetical purpose invented in defense of a challenged law. The rational

basis test may be deferential, but it should not be applied to legislative action in the "toothless" manner advocated for by Lyft and its supporters. *Piccioli*, 2019 IL 122905, ¶ 55 (Theis, J., dissenting, joined by Garman, J. and Thomas, J.).

Lyft's *amicus*, the Chamber of Commerce, argues that Jane's position is based on an "inaccurate picture of the history of the special legislation provision." Chamber Br. 6. The Chamber relies on George Braden and Ruben Cohn's, *The Illinois Constitution: An Annotated and Comparative Analysis* (1969), a work discussing the 1870 Constitution published in the run up to the 1969-1970 Constitutional Convention. That work, in turn, relied on an article Jane cited for her historical analysis, namely, Albert Kale's seminal *Special Legislation as Defined in the Illinois Cases*, 1 Ill. L. Rev. 63 (1906). Pl.'s Br. 39. The Chamber quotes extensively from both works when arguing that this Court has "always" judged statutes challenged as special legislation simply by whether they are "rational," equating that with the rational-basis test. Chamber Br. 7.

However, the Chamber ignores that when Kale was discussing special and local legislation (the two were treated together in the 1870 Constitution), he explained that a law was unconstitutional "'[e]ven if there be one or more rational grounds for legislating in behalf of the objects to which the Act applies and not for others of the same general sort, yet *if no rational ground is embodied in the Act's description of the objects to which it applies then the Act*

is held to be 'local' or 'special.'" Braden at 210 (quoting Kale at 76) (emphasis original). From this, Braden said that "if the legislature has the reason for classification, it must state what the reason is and the court will judge the rationality of the classification *by the stated reasons*, *not by any conceivable basis that someone might dream up*." *Id.* (emphasis added). Braden identified this as the relevant "key to acceptable classification" by the legislature, a key that does not open a door to the Chamber's position. *Id.*

Plainly then, special legislation challenges are distinct from equal protection challenges, at least when the purpose of the challenged legislation is known. There is a reason why the special legislation clause is "the one provision in the legislative articles that specifically limits the lawmaking power of the General Assembly" (*Best*, 179 Ill. 2d at 391), why that clause says the determination of whether a law is special legislation is "a matter for judicial determination" (Ill. Const. 1970, art. IV, § 13), and why commentators have explained that the clause reserves to the judiciary the "means of invalidating legislation that might otherwise pass muster under the equal protection clause." Lousin at 115.

D. Hypothetical justifications do not control special legislation analysis when the purpose of the challenged statute is known

Hedging against the possibility that the Court will recognize that the legislative history of H.B. 4075 is not the legislative history of the TNPA, Lyft and its supporters argue that the Court must accept the constitutionality of Section 25(e) if it can hypothesize any connection it may have to a legitimate

state interest. Lyft Br. 30; AG Br. 19, 21; Chamber Br. 6. To this, Jane asks why this Court should give *any* deference to a statute passed using unquestionably unconstitutional means to evade a constitutional requirement designed to ensure legislative deliberation and transparency. *Infra* 31-36.

Having said that, Jane acknowledges that this Court's special legislation jurisprudence has borrowed heavily from equal protection analysis. Pl.'s Br. 37. But that does not change the fact that the special legislation clause was retained in the 1970 Constitution, despite the first-time inclusion of an equal protection guarantee, because special legislation "supplements" equal protection and is not redundant of it. *Grasse*, 412 Ill. at 194. Lyft and its supporters argue this merely means that special legislation is the mirror image of equal protection. Lyft Br. 31. This Court has said otherwise, explaining that although the two constitutional provisions "cover much of the same terrain, they are not duplicates," their protections are not coextensive, and if anything the 1970 Constitution "increased judicial responsibility" for evaluating laws challenged as special legislation. *Grace*, 51 Ill. 2d at 487. To this it must be added when the Court has said that it judges special legislation and equal protection challenges under the same standards, it has often qualified that statement with the word "generally." *See*, *e.g.*, *Best*, 179 Ill. 2d at 393; *Piccioli*, 2019 IL 122905, ¶ 20. Lyft and its supporters ignore that oft-stated qualification, venturing no guess at its meaning. In fact, beyond asking whether a fundamental right or suspect classification is at issue, they

completely fail to consider the types of cases in which their preferred level of scrutiny has controlled.

This is because none of the cases relied on by Lyft and its supporters involved situations where the Court decided to *ignore* the legislature's plainly-expressed purpose for enacting a statute in favor of an after-the-fact justification. *See Big Sky Excavating v. Ill. Bell Tel. Co.*, 217 Ill. 2d 221 (2005); *Crusius v. Ill. Gaming Bd.*, 216 Ill. 2d 315 (2005); *General Motors Corp. v. St. Motor Vehicle Rev. Bd.*, 224 Ill. 2d 1 (2007); *Piccioli*, 2019 IL 122905. In contrast, and as the Attorney General acknowledges, in many of the cases where the Court has struck down a statute as unconstitutional special legislation, it has done so based on the stated intent of the legislature. AG Br. 22. The Attorney General tries to explain this away by arguing that resort to actual legislative intent and history "can support a statute's conceivable purpose," but it is not always necessary. *Id.* Perhaps, but neither Lyft nor its supporters cite a single case where the stated purpose of a statute was disregarded in favor of a hypothetical after-the-fact justification.

In sum, Lyft and its supporters are asking the Court to disregard facts in favor of fiction when they urge it to ignore: the fact that every provision of the TNPA except Section 25(e) is aimed at public and passenger safety and wellbeing; the only purpose of the TNPA identified by its sponsor (multiple times) was public and passenger safety and wellbeing; rideshare carrier immunity was never discussed in any fashion by the legislature, despite Lyft's

insistence that Section 25(e) was the key to the balancing of interests supposedly achieved in the TNPA. Accepting Lyft's argument would require the Court to use outcome determinative reasoning to back into a rational relation affirming the validity of a special benefit obtained through unconstitutional means. Jane respectfully submits that it beggars belief to think the Court would disregard the stated aim of the TNPA in favor of a fanciful excuse for an outlier provision granting a special privilege to a favored business interest, especially when doing so would deny rape victims their most effective avenue for obtaining relief against the companies that delivered them into the hands of their attackers, rendering them second-class rape victims under Illinois law.

E. Section 25(e) has no rational relation to the stated purpose of the TNPA

For the reasons discussed above, when Lyft and its supporters argue that one purpose of the TNPA was to promote the growth of rideshare carriers in Illinois, and that Section 25(e) was consistent with that purpose, they are relying on arguments disconnected from and inconsistent with the stated legislative aim of the TNPA. All of the authority discussed by the Attorney General describing cases in which laws were struck down as unconstitutional special legislation when their challenged provisions were not reasonably connected to the stated purpose of the statutes is, consequently, directly applicable here. *See* AG Br. 31. In all of those cases the Court looked to the legislature's stated intent, determined the challenged provision and

classification had no rational relation to that stated end, and struck the provision down as unconstitutional special legislation. The same should occur here. Granting rideshare carriers immunity from vicarious liability has no reasonable relation to protecting public and passenger safety and wellbeing.

F. Section 25(e) serves no hypothetically legitimate state interest and has no relation to such an interest

Even if the Court opts to consider hypothetical reasons for the inclusion of Section 25(e) in the TNPA, Lyft's arguments fail because the favoritism embodied in that provision is not rationally related to a legitimate state interest. As discussed in Jane's opening brief, when answering whether a legislative classification is rationally related to a legitimate state interest, courts must ask whether the classification created is based on reasonable differences in kind or situation. Pl.'s Br. 46-55. The differences underlying the classification "must exist and not be created by the legislation making the classification." *Giebelhausen v. Daley*, 407 Ill. 25, 37 (1950). The basis for the classifications must also be sufficiently related to the evil to be obviated by the statute. *Best*, 179 Ill. 2d at 393-94. Section 25(e) fails this test in every regard.

1. The state has no legitimate interest in favoring rideshare carrier growth over the safety and wellbeing of passengers and the public

Lyft and its supporters argue that promoting the growth of the rideshare industry in Illinois is a legitimate state interest because rideshare carriers provide jobs and increase access to personal transportation. Viewed in such isolation, the promotion of almost any business could similarly be viewed as a

legitimate state interest. For example, one could argue that showing special preference to a pesticide producer promotes a legitimate state interest because it creates area jobs and because agriculture is an important part of Illinois' economy. One would, however, presumably have a more difficult time making the same argument were it known that the same pesticide producer was making DDT and injuring Illinois residents in the process. After all, the state does not have an interest in allowing a business to harm its citizenry.

The relevant question is therefore not simply whether the state has a legitimate interest in promoting the growth of rideshare carriers, but whether it has a legitimate interest in promoting the growth of the rideshare industry at the expense of the safety and wellbeing of their passengers. *See Best*, 179 Ill. 2d at 395 ("this court has invalidated legislative classification under the special legislation clause where they have an artificially narrow focus and which appear to be designed primarily to confer a benefit on a particular private group without a reasonable basis, rather than to promote the general welfare"). Jane submits that the answer to that question is self-evident.

As Justice Gordon noted below, the Illinois Constitution states that its purpose is to "'provide for the health, safety and welfare of the people,'" and to "'assure legal, social and economic justice'" to its citizens. A106 (quoting Ill. Const. 1970 pmbl.). These words encapsulate the social contract agreed to by the State and its people, and if they have any meaning, surely it is that the government charged with safeguarding the people and their welfare has no

legitimate interest in sacrificing their safety to promote a favored private business interest. The State's exercise of its police power is only valid if it promotes the health, safety, and welfare of the public. *See People v. Austin*, 2019 IL 123910, ¶ 61 (defining the legitimate exercise of police power as that which is necessary to protect the health and safety of a state's citizens).

Lyft and its supporters rely on *Bilyk v. Chicago Transit Authority*, 125 Ill. 2d 230 (1988), and *Schuman v. Chicago Transit Authority*, 407 Ill. 313 (1950), for the proposition that the State has a legitimate interest in immunizing private transportation companies from vicarious liability. Neither case supports that conclusion. In *Bilyk*, this Court affirmed the constitutionality of a statute that immunized the CTA from liability for injuries sustained by passengers resulting from the criminal actions of third parties, *not* employees or agents. Likewise in *Schuman*, on which *Bilyk* relied, the Court upheld the constitutionality of a statutory provision setting procedural limitations on personal injury actions brought against the CTA.

In both *Bilyk* and *Schuman*, the Court's holdings were based on the fact that the statutes at issue protected a public—rather than private—transportation carrier, which was prohibited from earning profits, relied largely on taxpayer funding, and thus had limited resources, making liability limits necessary for it to continue performing its public function. *Bilyk*, 125 Ill. 2d at 237-38; *Schuman*, 407 Ill. 2d at 320-21. The Court in *Schuman* further held that municipally-owned transit authorities were not among those type of

entities then enumerated in the special legislation clause, exempting the CTA from its reach. 407 Ill. 2d at 321.[4] Lyft and Uber, publicly-traded companies with a combined market capitalization over $100 billion, can hardly compare themselves to the CTA and thus cannot rely on these cases for support.

At the heart of Lyft's argument is its barely concealed view that promoting its private business interest is an end that justifies the adoption of any means necessary, and any consequences suffered, to attain it. For all the statements of sympathy for Jane that Lyft makes in its brief, this is a cold calculation.[5] But cold does not mean rational. Lyft cannot justify its position that the state has a legitimate interest in promoting rideshare carriers' private business interests at the expense of public and passenger safety and wellbeing.

2. Section 25(e) is not based on any real and substantial differences between rideshare carriers and other common carriers

The classification at issue here between common carriers and rideshare carriers is a legislatively-created classification, not one that exists in any meaningful fashion in the real world. As discussed in Jane's opening brief, there are no real and substantial differences between rideshare carriers and

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[4] The 1970 Constitution did away with the enumerated categories of banned legislation in the special legislation clause. *Best*, 179 Ill. 2d at 392-93.

[5] This is especially so given the recent release of data showing that Lyft had 4,158 sexual assault reports between 2017 and 2019, including 360 reports of rape. Faiz Siddiqui, *Lyft says it recorded more than 4,000 cases of sexual assault over 3 years*, Washington Post (Oct. 22, 2021), https://www.washingtonpost.com/technology/2021/10/22/lyft-safety-report/.

their competitors significant enough to justify the special treatment found in Section 25(e). Pl.'s Br. 46-55. They are all private, for-profit businesses engaged in the provision of passenger transportation to the public. They sell rides. In *some* instances, they may use different technology to sell those rides, but that is all, and it is not enough to warrant the special treatment they received here.

Lyft and its supporters argue that rideshare carriers are different because their drivers can only be hailed through smartphone apps. Lyft Br. 44-45. Lyft says this difference "fundamentally alters the relationship between rider and ride" (Lyft Br. 44), without ever actually explaining why that is the case; that is, Lyft never explains why this supposedly distinguishing characteristic matters to the constitutional analysis, perhaps because it does not.

As the court in *O'Connor v. Uber Technologies, Inc.*, 82 F. Supp. 3d 1133 (N.D. Cal. 2015), explained, rideshare carriers created software apps that connect drivers and passengers, "but this is merely one instrumentality used in the context of [their] larger business." *Id.* at 1141. These companies do not sell or license their software, they sell their rides. *Id.* The same is true of other common carriers, including cab companies, which use apps to sell rides, and airlines, which have for years almost exclusively used apps and websites to sell flights. Narrowly focusing the inquiry on how rideshare carriers sell their products misses the fundamental classification of what it is they are selling. *Id.* When "the focus is on the substance of what the firm actually does," it is

clear that Lyft and Uber are, just like Yellow Cab or United Airlines, simply private passenger transportation companies selling rides to the public. *Id.*

Lyft and its supporters further argue that rideshare carriers are substantially different because they rely on part-time "gig" drivers using the service to supplement their incomes. While some federal courts have been quick to repeat that marketing line, it is by no means an established fact. Lyft and Uber are "notorious" for refusing to release independent, verifiable data supporting these claims. Tyler Sonnemaker, *Uber and Lyft say the battle of AB-5 is about preserving flexibility for part-time gig workers. The reality is their businesses have become dependent on full-time drivers and they can't afford to pay them like employees*, BUSINESS INSIDER (Aug. 21, 2020), https://www.businessinsider.com/uber-lyft-ab5-fight-reveals-dependence-full-time-drivers-2020-8. And several independent studies have substantially debunked these claims. *Id.*; Tracey Lien, *Most Uber and Lyft drivers in L.A. work full time and still struggle to make ends meet, study says*, Los Angeles Times (May 30, 2018).

Even if Lyft's unsupported representations on this point were true, it would not matter. As Justice Gordon reasoned below, "the fact that [rideshare carriers] rely on non-professional, part-time drivers demonstrates that it is *unreasonable* for the General Assembly to weaken the protections given to [their] passengers." A105-06 (emphasis original). This should be obvious. If a general contractor decided to cut costs by using non-professional

subcontractors, one would presumably not argue that the general contractor should be less vicariously liable for any subsequent harm caused by its subcontractors, and yet that is essentially Lyft's argument here.

Citing several federal decisions, Lyft argues that "every federal court of appeals to consider the issue has found meaningful distinctions" between taxicabs and rideshare carriers. Lyft Br. 41. Lyft relatedly argues that the existence of provisions identical or almost identical to Section 25(e) in the laws of 20 other states "itself strongly supports a finding of rationality." *Id.* "That 'everybody is doing it' is hardly a litmus test for the constitutionality of a statute." *Lebron*, 237 Ill. 2d at 249. Further, Lyft's federal cases were brought by taxicab companies or taxicab associations raising equal protection or takings challenges on commercial grounds, which Jane has already distinguished. Pl.'s Br. 48-52. Justice Gordon correctly observed below that this is the *first case in the nation* addressing a provision like Section 25(e) in a special legislation challenge, and more broadly the *first case in the nation* to consider the propriety of a provision exempting rideshare carriers from vicarious liability. A103.

Lyft also argues that rideshares differ from other common carriers because they share a preexisting contractual relationship with passengers. Lyft Br. 43. Jane has already discussed how the relationship between other common carriers and their passengers are also often or usually governed by prearranged and preexisting contractual relationships, nullifying this

supposed distinction. Pl.'s Br. 50. Indeed, Lyft would be hard pressed to find examples of persons hailing taxicabs from the street in Elgin, Ottawa, Springfield or Mount Vernon. Lyft responds that it does not matter that other common carriers may be prearranged and have preexisting relationships with their passengers, it only matters that taxicabs do not generally have such relationships. Lyft Br. 43. Lyft is mistaken. Section 25(e) does not draw the line only between rideshares and taxicabs, it rather draws the line between rideshares and all common carriers. How such other common carriers operate, and the lack of real and meaningful differences between them and rideshare carriers, is thus directly relevant to the inquiry here.

In a bold assertion given the circumstances of this case, Lyft argues that it is sufficiently different from other common carriers because passengers are comparatively safer due to the information they receive about their drivers in the short moments before their drivers arrive. Lyft says this informs passengers' decision about "whether to enter a car in the first place." Lyft Br. 43. As discussed in Jane's opening brief, this information is meant to help drivers and passengers identify each other and includes the driver's first name, a photograph of the driver, and a vehicle description. Pl.'s Br. 51-52. The only information that can be gleaned from this is a driver's race, sex, rough age, and vehicle type, information that even Lyft does not argue provides rational grounds for making safety decisions.

Lyft instead argues—for the first time—that aside from a physical description of the driver and his vehicle, passengers can also view a driver's "rating, reflecting past user experiences." Lyft Br. 44. This is not required by the relevant provision of the TNPA (625 ILCS 57/30), it is not a matter of record, and Lyft has not established such ratings existed when the TNPA was enacted. This is nevertheless a reference to Lyft and Uber's driver rating systems, which give passengers the opportunity to rate drivers on a scale of one to five stars. *See* Lyft's Help Page, "Driver and passenger ratings," https://help.lyft.com/hc/e/articles/115013079948-Driver-and-passenger-ratings. Each rating impacts a driver's cumulative score.

But these ratings are sharply inflated because drivers are automatically given perfect five-star ratings when passengers choose not to rate them, forget to do so, or do not do so quickly after their ride ends. *Id.* Along with other inflationary factors, this leaves the vast majority of drivers with a perfect five-star rating. *See* Apostolos Filippas, John Horton, & Joseph Golden, *Reputation Inflation*, at 2, Marketing Science (Oct. 3, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3136473. Further, when rideshare drivers fall below a 4.6 star rating, they are dropped from the platform and no longer allowed to drive for the carrier. James Cook, *Uber's internal charts show how its driver-rating system actually works*, BUSINESS INSIDER (Feb. 11, 2015), https://www.businessinsider.com/leaked-charts-show-how-ubers-driver-rating-system-works-2015-2. In short, these rating systems are designed to reflect

only perfect or nearly perfect ratings, and thus do not convey the kind of information to passengers that Lyft suggests.

For all the superficial or nonexistent differences that Lyft and its supporters rely on to distinguish rideshare carriers from other common carriers, they do not add up to anything approaching differences real and substantial enough to justify the favoritism shown in Section 25(e).

3. The arbitrariness of the classification created by Section 25(e) is demonstrated by its effect on victims like Jane

When considering a statutory provision challenged as special legislation, "courts must consider the natural and reasonable effect of the legislation on the rights affected by the provision." *Best*, 179 Ill. 2d at 394; *Grasse*, 412 Ill. at 193. The dissent below called this the "real difference" at issue in this case. A104. As Justice Gordon explained, "[u]nder Section 25(e), victims of crimes that were committed by drivers of [rideshares] are basically prohibited from obtaining relief for acts of sexual predators, unlike victims of crimes that were committed by drivers of common carriers." *Id.*

Whereas passengers sexually assaulted by taxicab drivers, locomotive engineers or airline pilots would be entitled to a full recovery against the taxicab company, railroad or airline, respectively, victims in the same position who are assaulted by rideshare drivers are barred from pursuing the same claims and obtaining the same recoveries. Similarly situated victims are subject to radically different outcomes, and victims like Jane are impermissibly made to shoulder the burden of the decision that Lyft says the legislature made

to place rideshare carriers' interests ahead of those of sexual assault victims. *See Best*, 179 Ill. 2d at 407 ("the prohibition against special legislation does not permit the entire burden of the anticipated cost savings to rest on one class of injured plaintiffs").

Lyft argues that this is of no moment because victims like Jane may still pursue direct liability claims against it. Lyft Br. 45-46. Of course, this assumes others in Jane's position will have such alternative claims. It also ignores that the possibility and presence of such claims rightly had no impact on the outcome in *Green v. Carlinville Community Unit School District No. 1*, 381 Ill. App. 3d 207, 209 (4th Dist. 2008), where the appellate court confirmed the right of a plaintiff to hold a non-common carrier vicariously liable under the highest duty of care. Whether victims do have such claims, and whether they are viable, is nonetheless beside the point because Jane and others in her position are entitled to all their rights and remedies.

In *Grace*, this Court considered a special legislation challenge to provisions of the Insurance Code that had the cumulative effect of limiting the ability of auto accident victims to recover certain types of compensatory damages, depending on whether the parties at fault were using automobiles for commercial or personal purposes. 51 Ill. 2d at 481-83. The State argued that the provisions were the legislature's response to growing public demand for a change in the way society coped with the high costs of auto accidents, and

capping damages was a rational response to this legitimate government concern.

Looking first and only to the legislature's actual intent, rather than unsupported hypothetical reasons for the provisions at issue, the Court in *Grace* agreed those provisions were aimed at a "single problem," the "evils in the existing method of disposing of personal injury claims arising out of motor vehicle accidents." *Id.* at 484-85. The Court nevertheless said that even if that problem was real, it was arbitrary to permit or deny recovery based on the identity of the wrongdoer. *Id.* at 487-90. As the Court said:

> There are many purposes for which the obvious differences between private passenger automobiles, buses, taxicabs, trucks and other vehicles would justify different legislative treatment. But the determination of the amount to be recovered by persons injured by those vehicles and the conditions governing that recovery is not one of those purposes.

Id. at 487-88. The same is true here.

The Attorney General argues that Jane's interests are irrelevant because the rational basis test "focuses on the differences between the regulated entitles (TNCs) and other similarly situated entities (taxicabs, according to Doe's argument) – not differences among other parties (e.g., passengers)." AG Br. 32. But those classified in Section 25(e) are not only rideshare carriers and common carriers. The entire position adopted by Lyft and its supporters centers on their contention that the *implied* effect of the classification drawn in Section 25(e) between rideshare carriers and common carriers necessarily precludes vicarious liability for rideshare carriers. If so,

then the victims of those attacked by rideshare carrier drivers and common carrier drivers are also impliedly classified.

Following the appellate court majority below, Lyft argues that Jane's inability to hold it vicariously liable is not due to happenstance, but rather her decision to hail a rideshare instead of a taxicab on the night she was kidnapped and raped. Lyft Br. 46. According to Lyft, the fact that Jane may not have known about Section 25(e) is irrelevant because ignorance of the law is no excuse. *Id.* at 47, n.20. This is simply victim blaming. As the Force of Lawyers Against Sexual Harassment, the Illinois Coalition for Sexual Assault, and Resilience put it in their joint *amicus* brief, Lyft's argument is the equivalent of asking a sexual assault victim about the length of the skirt she was wearing when attacked. FORCE Br. at 6. "No one 'asks for it' by getting into a rideshare vehicle rather than a cab." *Id.* It is likewise absurd to suggest that Jane should or could have known what Section 25(e) would mean even if she were aware that it existed. Lyft's argument that Section 25(e) is an implied grant of immunity was first raised in this case, never before, and its indirect language could not reasonably be understood to put the public on notice of the meaning Lyft newly ascribed to it.

III. Alternatively, the Court should not apply the enrolled-bill doctrine when the legislative record demonstrates an indisputable Three-Readings Rule violation

Article IV, section 8(d) of the Constitution requires that all bills be read out on three different days in each house prior to passage. Ill. Const. 1970, art.

IV, § 8(d). This is a constitutional mandate, not a suggestion. The purpose of this mandate is to promote legislative deliberation and transparency. *Giebelhausen*, 407 Ill. at 48; Lousin at 105. Here, there is no question that the TNPA was read out only once in each house prior to passage. No party contests this. The passage of the TNPA was therefore illegal and unconstitutional on its face.

Lyft argues that although the legislature violated the Three-Readings Rule when passing the TNPA, the enrolled-bill doctrine prevents the Court from exercising its power of judicial review. Lyft Br. 48. While this Court has previously applied that doctrine and said it would thereunder "defer to the legislature hesitantly" out of respect for the separation of powers, it has not examined the origins of the rule, which make clear that such deference serves no purpose where there is an indisputable violation of the Three-Readings Rule.

Application of the enrolled-bill doctrine in the United States is often traced back to *Marshall Field & Co. v. Clark*, 143 U.S. 649 (1892), and a dispute over whether the "enrolled" (*i.e.*, reported) version of a statute differed from the bill actually passed by Congress. The Supreme Court adopted the doctrine because it believed that legislative journals then kept were unreliable and the attestations of the House Speaker and Senate President represented the most reliable and "solemn assurance" that a bill was properly passed, further considering the possibility that legislators might falsely authenticate a bill "too

remote to be seriously considered." *Id.* at 672-74. The Court viewed this as an issue concerning respect for a coordinate branch of government, which was in the best position to say whether its records were reliably kept and thus its procedures followed. *Id.* at 671-73.

Today, the accuracy of legislative recordkeeping is no longer a concern. Improvements to legislative recordkeeping in the form of electronic recordings, computer tracking, and even the legislature's official website allow one to easily monitor in near real time, and later reconstruct, the course and content of a bill. *See* Illinois General Assembly Bill Tracker, https://www.ilga.gov/legislation/. In other words, the reason for the original adoption of the enrolled bill doctrine and the deference to the legislature embodied therein is no longer a concern. *See* Ittai Bar-Siman-Tov, *Legislative Supremacy in the United States?: Rethinking the "Enrolled Bill Doctrine*," 97 Geo. L. J. 323 (2009) (discussing this and other reasons why the enrolled bill doctrine is outdated).

This raises the question of what purpose continued adherence to the enrolled-bill doctrine serves in cases where a reliable legislative record demonstrates an indisputable Three-Readings Rule violation. Respectfully, when the Court defers to the legislature in such circumstances, it only incentives legislators to avoid the rigors of constitutional lawmaking. This Court has observed that the legislature has proved time and time again that it is unwilling or unable to police itself. *Geja's Café v. Metro. Pier and Expo. Auth.*, 153 Ill. 2d 239, 260 (1992). Contrary to the U.S. Supreme Court's

expectation, the doctrine has become a license to lie, a tool for the legislature to avoid a constitutional mandate that exists to ensure good government. This case presents an obvious and damning example of such abuse.

Lyft and the Attorney General primarily argue that the enrolled-bill doctrine is *stare decisis* and must be respected as such. But it is "common wisdom that the rule of *stare decisis* is not an 'inexorable command,' and certainly it is not such in every constitutional case." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 854 (1992). Courts regularly reexamine prior holdings to determine if their reasoning has stood the test of time. *Id.* The enrolled-bill doctrine plainly fails this test, at least in cases like this when the legislative record presents an undeniable Three-Readings Rule violation.

Lyft also argues that this is not the case to reexamine the wisdom of the enrolled-bill doctrine because the TNPA's legislative history "demonstrates the very 'transparency and deliberation in the lawmaking process' that Plaintiff points to as the purpose of the three-readings rule." Lyft Br. 51. This argument not only relies on improperly conflating the legislative histories of H.B. 4075 the TNPA (*supra* 5-10), but also on ignoring the fact that the TNPA was introduced and passed after one reading and in fewer than 24 hours. The TNPA is not an example of transparent good government. It is precisely the opposite.

The Attorney General similarly argues that although the TNPA's passage "may not have technically complied" with the Three-Readings Rule, it

did not undermine the rule's purpose because House Amendment 1 to S.B. 2774 was germane to the original bill. AG Br. 37-39. This argument relies on the same narrative fallacy as Lyft's argument. The original S.B. 2774 addressed the regulation of public accountants. The TNPA, embodied in House Amendment 1 to that bill, completely replaced it with legislation addressing rideshare regulation. Pl.'s Br. 8. Where, as here, "there was a complete substitution of a new bill under the original number, dealing with a subject which was not akin or closely allied to the original bill, and which was not read three times in each House, after it has been so altered, [it is] in clear violation" of the Three-Readings Rule. *Giebelhausen*, 407 Ill. at 48. Adopting the Attorney General's argument that the radically different H.B. 4075 should somehow be considered the "original" bill would not only be counter-factual, but "would render this clause of the constitution nugatory by construction, and invite disregard of its salutary provisions." *Id.*

The Attorney General also argues that this is a political question the Court should avoid. AG Br. 36. Given that the Attorney General's oath of office requires him to swear that he "will support … the constitution of the state of Illinois" (15 ILCS 205/1), it is surprising to see him urge the Court to ignore a clear constitutional violation. Regardless, this Court has already rejected his argument when explaining, consonant with over two centuries of American constitutional jurisprudence, that when considering the Three-Readings Rule it has the "responsibility to ensure obedience to the constitution remains an

equally important concern" as the separation of powers doctrine. *Friends of the Parks*, 203 Ill. 2d at 329; *see also Marbury v. Madison*, 5 U.S. 137, 177 (1803). "This court has often recognized that the separation of the three branches of government is not absolute and unyielding." *Best*, 179 Ill. 2d at 411. The Court has therefore warned the legislature on several occasions that if it continued to flaunt the Three-Readings Rule, the Court may "revisit this issue on another day to decide the continued propriety of ignoring this constitutional violation." *Geja's Café*, 153 Ill. 2d at 260. Jane respectfully submits that day has come.

IV. Relationships beyond the traditional four special relationships exist and apply to hold rideshare carriers to the highest duty of care under Illinois common law

Lyft throws the proverbial kitchen sink at Jane's argument that rideshare carriers are subject to the same heightened duty of care under the common law as common carriers, regardless of Section 25(e). Pl.'s Br. 17-34. Its position can, however, be reduced to two main arguments. First, Lyft argues that the appellate court in *Green*, which decision predated the TNPA, did not mean what it said when it held that a non-common carrier could be held to the same high duty of care as a common carrier when "performing the same basic function" as a common carrier in "transporting individuals." 381 Ill. App. 3d at 212-13. Nor, argues Lyft, did the appellate court mean what it said when it expressly analogized school children riding a school bus to common carriers and passengers because in both situations the passenger "cannot ensure his or

her own personal safety" and must rely on the transportation carrier "to provide fit employees" to transport them safely. *Id.* at 213.

Focusing on a single sentence in which the court in *Green* said that its holding was limited to the common law duty school districts owe student passengers, Lyft argues that *Green* must be confined to the school bus setting. Lyft Br. 24. However, read in context, it is clear that the appellate court's statement was not limiting the scope of the rationale underlying its holding, but only the impact that holding had on other preexisting duties owed by school districts to students. In this way, Lyft's argument completely fails to consider the framework of the appellate court's decision in *Green*.

Lyft relatedly argues that *Green* did not involve a situation involving a defendant "statutorily excluded from common carrier duties." Lyft Br. 23. But as discussed above, Section 25(e) does not, and as importantly does not necessarily, exclude rideshare carriers from common carrier duties by granting them immunity from vicarious liability. *Supra* 15. To be sure, in light of *Green* or just the common law definition of a common carrier, the legislature could have said that rideshare carriers "are not common carriers and are not subject to a heightened duty of care," or it could have said they "are not subject to vicarious liability." The legislature did neither of these things. It simply said that rideshares are not common carriers.

As the Illinois Trial Lawyers Association argued in its *amicus* brief, by stating as a matter of fact that rideshare carriers are not common carriers, the

legislature was improperly attempting to legislate a fact. ITLA Br. 5. Rideshare carriers either do or do not fit the legal definition of a common carrier. If the legislature wished to exclude rideshare carriers from common carrier status, it could have changed the common law definition of a common carrier. It did not do so. The legislature simply said that rideshares are not common carriers.

Second, Lyft argues that the common law cannot be understood or expanded to include rideshare carriers as common carriers or as a new category of special relationship. Lyft does not challenge Jane's reasoning that rideshare carriers exercise the same type of control over their passengers' safety as other common carriers and thus owe their passengers the same duty of care. Nor does Lyft deny that the same policy consideration animating all four of the traditional special relationships is control over the safety of another, which rideshares exercise. Pl.'s Br. 19-22. Lyft simply points to *Bogenburger v. Pi Kappa Alpha Corp., Inc.*, 2018 IL 120951, and *Iseberg v. Gross*, 227 Ill. 2d. 78 (2007), and argues they rejected the same arguments Jane makes here. Lyft is mistaken.

Neither *Bogenburger* nor *Iseberg* are on point. Neither case foreclosed the possibility of ever expanding the traditional four special relationships. Indeed, *Bogenburger* identified at least two additional special relationships, the parent-child and master-servant relationships. 2018 IL 120951, ¶ 33. *Bogenburger* also did not involve a principal/agent relationship, and the Court

in that case found that the alleged dominant party (a fraternity's national organization) did not exercise control over the local chapter's conduct, much less over the student whose death was at issue. *Id.* ¶ 30. The Court in that case thus did not reject a control test, as Lyft argues, it simply found that such control was lacking. Further, in *Iseberg*, there was not even an allegation of control and so its analysis never got past application of the no-duty rule. The rejected argument made in *Iseberg* was that traditional ordinary negligence factors should wholly replace the special relationship framework, including in cases involving criminal harm inflicted by a third party. *Id.* at 94-96. That is not Jane's argument here.

CONCLUSION

This case can quickly and cleanly be resolved by affirming the obvious: Section 25(e) is not a proper grant of immunity and thus does nothing to impede Jane's common law right to hold Lyft vicariously liable for her rape by its agent. However, if Section 25(e) is a grant of immunity, then it is an unconstitutional one. The legislature evaded a constitutional mandate designed to ensure transparency in order to provide a favored private business interest with a benefit that relegates Jane and other victims like her to the status of second-class rape victims. That injustice must be corrected.

WHEREFORE, and for all the reasons stated herein and in Jane's opening brief, Jane respectfully asks the Court to answer both certified

questions in the negative, remand this matter with instructions to reinstate her relevant claims, and grant any other relief the Court deems appropriate.

Dated: October 29, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, J. Timothy Eaton, an attorney, hereby certifies that the foregoing Reply Brief conforms to the requirements of the Illinois Supreme Court Rules 341(a) and (b). The length of this brief is 9,999 words, excluding the words contained in the Rule 341(d) cover, the Rule 341(c) certificate of compliance, those matters to be appended to the brief under Rule 342(a), and the certificate of service.

Dated: October 29, 2021

/s/ J. Timothy Eaton

Case No. 126605

In the
Supreme Court of Illinois

JANE DOE,

Plaintiff-Appellant,

v.

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

Defendants-Appellees.

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

NOTICE OF FILING

TO: *See Certificate of Service*

PLEASE TAKE NOTICE THAT on the **29th day of October, 2021**, we caused to be filed (electronically submitted), with the Supreme Court of Illinois, ***Plaintiff Jane Doe's Reply Brief***, a copy of which is hereby served upon you.

Dated: October 29, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, pursuant to the provisions of 1-109 of the Illinois Code of Civil Procedure, and Ill. S. Ct. R. 12, hereby certifies and affirms that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be and that he caused the foregoing **Notice of Filing** and ***Plaintiff Jane Doe's Reply Brief***, to be sent to the parties listed below on this 29th day of October, 2021, by *electronic mail* from the offices of Taft Stettinius & Hollister LLP before the hour of 5:00 p.m.:

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