No. 1-19-1328

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JANE DOE,	)	On Appeal from the Circuit Court of
	)	Cook County, Illinois, County
Plaintiff-Appellant,	)	Department, Law Division
	)	
v.	)	
	)	
LYFT, INC., ANGELO McCOY,	)	Case No. 17-L-11355
STERLING INFOSYSTEMS, INC.	)	
d/b/a STERLING TALENT	)	
SOLUTIONS,	)	The Honorable
	)	Patricia O'Brien Sheahan,
Defendants-Appellees.	)	Judge Presiding.

BRIEF OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE LYFT, INC.

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INTEREST OF THE *AMICUS CURIAE*

Founded in 1912, the Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation.[1] The Chamber 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 regularly participates, as an *amicus curiae* or as a party, in cases in federal and state courts that raise issues of concern to the nation's business community.[2]

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*

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1 The Chamber is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held corporation owns 10% or more of the Chamber.

2 The Chamber states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from the Chamber, its members, or its counsel, made any monetary contribution to fund the preparation or submission of this brief.

Millions of Workers and Consumers (Jan. 2020), available at https://www.uschamber.com/report/ready-fire-aim-how-state-regulators-are-threatening-the-gig-economy-and-millions-of-workers. 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).

Given the broad membership of the Chamber, which includes not only gig-economy companies across personal transportation, delivery of products sand goods, and personal services, but also the many business both large and small that benefit from their innovative business models, the Chamber focuses this amicus brief solely on whether the Transportation Network Provider Act, 625 ILCS 57/1 *et seq*. (2018), violates the Special Legislation provision of the Constitution of Illinois.

INTRODUCTION

In this appeal, no one disputes that Defendant Angelo McCoy committed a horrific crime against Plaintiff. He is awaiting trial for that crime, and if convicted he could be sentenced to life in prison. He also faces a civil action brought by Plaintiff. As the alleged perpetrator of an appalling

crime, he should be held fully accountable for his actions in the criminal and civil proceedings.

But in addition to pursuing a judgment against Mr. McCoy, Plaintiff seeks to hold Defendant Lyft, Inc. vicariously liable for Mr. McCoy's criminal conduct because Lyft provided the mobile ride-referral platform (via the Lyft app) that connected Plaintiff to Mr. McCoy for a ride. Plaintiff contends that Lyft—and all other transportation network companies (TNCs)—should be subject to the same kind of vicarious liability as "common carriers" even though an Illinois statute (Section 25(e) of the Transportation Network Provider Act) expressly declares that TNCs "are not common carriers." 625 ILCS 57/25(e). Plaintiff, supported by the Illinois Trial Lawyer Association (ITLA), urges this Court set Section 25(e) aside, either by extending vicarious-liability principles to effectively abrogate the statute or by declaring the statute unconstitutional. Lyft's brief explains why Illinois does not allow Section 25(e) to be set aside in any of the ways suggested by Plaintiff, but the response to one of Plaintiffs' constitutional arguments warrants elaboration.

Plaintiff and the ITLA argue that Section 25(e) is unconstitutional "special legislation" on the ground that it subjects technology companies (such as Lyft) to a different regulatory regime than taxis and, thus, treats similar things differently. Plaintiff acknowledges that it is constitutional for

the General Assembly to regulate mobile ride-referral mobile application providers such as Lyft differently from taxi cabs; just not, she says, through Section 25(e).

But Plaintiff is wrong, and that is the focus of this *amicus curiae* brief: There is no constitutional infirmity with the General Assembly treating TNCs differently from taxis in Section 25(e). They are not the same. TNCs provide fundamentally different services and operate in a new and different market. The General Assembly therefore did not improperly discriminate in treating these technology companies differently from taxis and other traditional common carriers. It is not arbitrary and irrational for the legislature to treat different things differently.

Moreover, the General Assembly had many good reasons to create a new regulatory scheme for TNCs that prevented TNCs from being deemed common carriers. The technological innovation spurred by gig-economy companies provides 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 the TNCs created through their technological innovation with the desire to ensure that the market continues to flourish and provide benefits to the people of Illinois. Indeed, far from

leaving TNCs unregulated in comparison to common carriers, it created a new regulatory scheme for their new business models.

Accordingly, the Circuit Court correctly rejected Plaintiff's argument that the Illinois General Assembly acted unconstitutionally in enacting Section 25(e) of the Transportation Network Provider Act. The Chamber urges the Court to affirm the Circuit Court's ruling on that score.

ARGUMENT

I. The Transportation Network Provider Act Is Not Unconstitutional Special Legislation.

Plaintiff contends that the General Assembly's decision to distinguish between TNCs and taxis arbitrarily discriminated in favor of TNCs in violation of the Special Legislation prohibition in the Constitution of Illinois. But Section 25(e) creates no such unconstitutional discrimination because (1) there are real and material distinctions between TNCs and common carriers like taxis, and (2) there are legitimate reasons for the General Assembly's policy judgment to establish a different regulatory scheme for TNCs.

A. There Is No Unconstitutional Discrimination Between Similar Entities.

Lyft and other TNCs are quite different from taxis and other common carriers. Companies such as Lyft and Uber provide a digital ride-referral mobile application that connects independent drivers with individual riders

who need personal transportation. Unlike taxis, they are more of an online marketplace or technology platform than a ride provider.

These companies 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.

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, and 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).

The Illinois Legislature 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."). Indeed, mobile digital referral application companies are fundamentally *not* common carriers: rather than taking all comers, they engage only with the individuals (both providers and consumers) who have downloaded the app to their smartphone or tablet, signed up for the service, agreed to the terms and conditions, and satisfied any other requirements of participating in the network created by the app. *See Ill. Transp. Trade Ass'n v. City of Chicago*, 839 F.3d 596, 598 (7th Cir. 2016); *Progressive Credit Union v. City of New York*, 889 F.3d 40, 50-51

(2d Cir. 2018); *Newark Cab Ass'n v. City of Newark*, 901 F.3d 146, 156-57 (3d Cir. 2018). In addition, the "multi-apping" feature of TNCs—a driver may use the apps of several platform-based companies simultaneously—further distinguishes TNCs from common carriers. An individual driver might be using the Lyft and Uber apps at the same time to find customers to provide a ride. And a driver might also toggle among using the Lyft and Uber apps, delivering meals for Postmates or Doordash, and delivering packages for Amazon or Walmart. This is decidedly something that common carrier drivers could not (and did not) do before the innovations of TNCs.

It is not unconstitutional for the General Assembly to accord different regulatory treatment to the disparate products offered by TNCs and taxi cabs. *Ill. Transp.*, 839 F.3d at 598 ("Different products or services do not as a matter of constitutional law, and indeed of common sense, always require identical regulatory rules."). Indeed, Illinois is one of at least 21 states across the Nation that have enacted laws providing that TNCs are not equivalent to common carriers and should not be subject to identical regulation. *See* C664-732; *see also e.g.*, Miss. Code § 77-8-3; 66 Pa. Cons. Stat. § 102; Fla. Stat. § 627.748; Alaska Stat. § 28.23.010; Colo. Rev. Stat. § 40-1-102; Tex. Occ. Code § 2402.002; W. Va. Code § 17-29-2; Va. Code § 46.2-2000; Wy. Stat. § 31-20-110(b); Iowa Code § 321N.3; Mont. Admin. R. 38.3.104. It is not

plausible that the policymakers in all of these jurisdictions have acted "arbitrarily" and without "a sound, reasonable basis." In fact, this policy view is the majority approach among the states to have addressed the issue. This widespread adoption of the same regulatory scheme provides strong support for the legitimacy (and rationality) of the Act's distinction. *See Gen. Motors Corp. v. State Motor Vehicle Bd.*, 224 Ill. 2d 1, 7-8 (2007).

That is not to say Illinois cannot require transportation network companies to take steps to protect consumers. Indeed, Illinois regulates TNCs by requiring TNCs to conduct background screenings of all providers who wish to use their platform, 625 ILCS 57/15, ensure that all providers have adequate automobile liability insurance, 625 ILCS 57/10, require providers to foreswear the use of drugs and alcohol while using the platform, 625 ILCS 57/25, and display the identifying information of a provider to consumers, 625 ILCS 57/30.

In short, the General Assembly recognized that TNCs and common carriers are distinct and require distinct regulatory and legal requirements. This Court should reject the argument that the Constitution of Illinois permits no distinction between a service that allows a consumer to download an electronic application to obtain a ride referral to an independent provider

participating on the network and any of the traditional common carrier services such as taxi cabs.

B. There Is A Rational Basis For The Transportation Network Provider Act.

The General Assembly had good reason to exclude TNCs from common carrier status in balancing its twin desires to regulate and facilitate growth of the new TNC market. Imposing common carrier status could have hampered that growth and prevented Illinois from enjoying the significant benefits that the gig economy offers to workers, consumers, and small businesses alike.

Workers in the gig economy "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 "[i]ndependent work … common in the construction trades, household and personal services, and transportation," 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 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 sharing economy increases labor force participation and hours worked for the underemployed. McKinsey, *Independent Work* at 84. To be sure, it also provides a means for the unemployed to earn an income. *Id*. at 85-86. But "[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" thus fills an important economic gap for millions of Americans. *See* U.S. Chamber, *Ready, Fire, Aim* at 14.

The data show that a key benefit to the sharing 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. It is for this reason that most workers who "go this route [do it] as a matter of preference rather than necessity." *Id*. at 41. By not having set hours, the 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 means a worker "can use multiple platforms simultaneously" as 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*. at 12.

As for consumers, they "have been the big winners in the expansion of digital on-demand platforms." 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. This stems from the fact that "[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.

There are environmental benefits to a consumer requesting a car when he or she needs one, rather than owning one: it means fewer cars are required, and fewer resources are devoted to manufacturing them. *The Rise of the*

Sharing Economy, The Economist (Mar. 9, 2013), *available at* https://www.economist.com/news/leaders/21573104-internet-everything-hire-rise-sharing-economy. It also benefits consumers because it allows them to hire someone to perform tasks at lower prices than before and generally with a great deal more ease and transparency," McKinsey, *Independent Work* at 88, and provides lower-income consumers with access to goods and services they could not otherwise afford. Della Bradshaw, *Sharing Economy Benefits Lower Income Groups*, The Financial Times (Apr. 22, 2015), *available at* https://www.ft.com/content/7afde9b0-d95a-11e4-a8f1-00144feab7de. For all of these reasons, the Federal Trade Commission has acknowledged that the consumer benefits 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 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), http://bit.ly/2iWIdHw.

There is every reason to believe this segment of the economy will continue to grow, in Illinois and across the Nation. As of 2016, it was reported that "only 15 percent of the independent workforce has earned income through

digital matching platforms, but these online marketplaces could eventually facilitate a larger share of independent work." McKinsey, *Independent Work* at 65. This is so because platforms offer larger scale—meaning they "expand the pools of possible matches of earners and customers and expand the range of tasks that are possible"—and because platforms provide "[f]aster and more accurate matches from real-time information." *Id*. at 66. The potential for these capabilities is supported by significant private sector investment, as well as substantial evidence that there is both an ample workforce of individuals seeking additional income opportunities and demand within a broad spectrum of the American economy. *Id*. at 73-81.

Illinois thus has reasonably sought to balance the need to regulate this growing sector with a need to encourage its growth. *See generally* Brandon Bordenkircher et al., *Managing the Sharing Economy: Municipal Responses to Homesharing, Ridesharing, and Bikesharing in Illinois*, *available at* https://las.depaul.edu/centers-and-institutes/chaddick-institute-for-metropolitan-development/research-and-publications/Documents/IMPJ_17-48_Sharing-Economy.pdf. That is enough to sustain the constitutionality of Section 25(e).

In responding to the legitimate policy reasons the General Assembly had for enacting Section 25(e), Plaintiff repeatedly seeks to depict the effect of Section 25(e) as one that is harmful to the public. *See, e.g.*, Pl. Br. 46-47,

49-51. This Court, however, is the wrong forum for such contentions. "Balancing … competing policy considerations is ultimately a matter for the legislature." *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 182 (2008); *see Roselle Police Pension Bd. v. Vill. of Roselle*, 232 Ill. 2d 546, 557 (2009) ("We must interpret and apply statutes in the manner in which they are written and cannot rewrite them to make them consistent with the court's idea of orderliness and public policy."); *Hayden v. County of Ogle*, 101 Ill. 2d 413, 421 (1984) ("'[W]e do not sit as a superlegislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses offends the public welfare.'") (quoting *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 423 (1952)). Instead, Plaintiff's contentions belong as part of a public policy debate in the General Assembly.

CONCLUSION

For the reasons set forth above, the Court should affirm that the Circuit Court correctly rejected Plaintiff's argument that the Illinois General Assembly acted unconstitutionally in enacting Section 25(e) of the Transportation Network Provider Act.

February 3, 2020

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I, Joshua D. Yount, an attorney, certify that the **Brief of Chamber of Commerce of the United States of America as *Amicus Curiae* in Support of Defendant-Appellant Lyft, Inc.** conforms to the requirements of Rule 341(a), Rule 341(i), and Rule 345(b). The length of this Petition, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the Rule 341(h)(1) statement of points and authorities, and the certificate of service, is 16 pages.

/s/ *Joshua D. Yount*