

**HOTEL, MOTEL, HOLIDAY INN[†] AND PEER-TO-PEER RENTALS:
THE SHARING ECONOMY, NORTH CAROLINA, AND THE
CONSTITUTION**

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Within the past several years, a new business model has rapidly expanded into a billion dollar industry, with potential to expand further—the sharing economy. The North Carolina General Assembly has yet to address how it intends to regulate the sharing economy. The General Assembly could choose to create completely new regulations for the sharing economy, decide to shoehorn the sharing economy into existing regulations, or elect to do a bit of both. As the General Assembly makes its decision, it should keep in mind the Constitutional challenges that new regulations will prompt. This Recent Development evaluates how the General Assembly should address regulating the sharing economy.

I. INTRODUCTION

Airbnb. Uber. ThredUP. The first company allows people to rent out extra space in their homes.¹ The second connects people that need rides with individuals that want to drive for a fee.² And the third sells “like-new” clothing online.³ At first glance, these three companies do not have much in common. But all three are

[†] THE SUGARHILL GANG, *Rapper’s Delight*, on SUGARHILL GANG (Sugar Hill Records 1979).

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¹ *About Us*, AIRBNB, <https://www.airbnb.com/about/about-us> (last visited Jan. 27, 2015).

² *The Company*, UBER, <https://www.uber.com/about> (last visited Jan. 27, 2015).

³ *About threadUP*, THREDUP, <http://www.thredup.com/about> (last visited Jan. 27, 2015).

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participants of a rapidly growing business model called the “sharing economy.”⁴

The sharing economy business model is based around the principle of using personal resources more efficiently.⁵ Personal resources are those resources that ordinary people have regular access to, such as spare bedrooms, large cars, or no-longer-worn clothes.⁶ Owners often underutilize their personal resources, either by not using the resources at all or by not using them to their full extent.⁷ Sharing economy companies, such as Airbnb, Uber, and thredUP, have discovered that non-owners are interested in accessing these underutilized resources and owners are willing to allow non-owners this access, often for a fee.⁸ To help facilitate this access, sharing economy companies act as online forums for people to advertise their available resources.⁹

Over the past several years, many companies¹⁰ have emerged using the sharing economy business model.¹¹ These companies

⁴ Molly Cohen & Corey Zehngbot, *Heads Up: What’s Old Becomes New: Regulating the Sharing Economy*, 58 B.B.J. 6, 6 (2014). It should be noted that while the word “sharing” usually means to use something with others free of charge, “sharing” in the sharing economy does not necessarily mean that items are free. Samuel Nadler, *The Sharing Economy: What Is It and Where Is It Going?* (May 9, 2014) (unpublished M.B.A. thesis, on file with MIT Sloan School of Management). Instead, “sharing” refers to providing temporary access of a good or service to many people, often as a result of a monetary exchange. See Kurt Matzler et al., *Adapting to the Sharing Economy*, 56(2) MIT SLOAN MGMT. REV. 71, 71 (2015).

⁵ Cohen & Zehngbot, *supra* note 4, at 6.

⁶ See Matzler et al., *supra* note 4, at 72.

⁷ See *id.* Even though these personal resources are often underutilized, owners would still like to have access to them. For example, an owner that has a lawnmower still wants to have access to that mower, but may only use that mower once a week during the year.

⁸ Danielle Sacks, *The Sharing Economy*, FAST COMPANY (Apr. 18, 2011, 1:05 AM), <http://www.fastcompany.com/1747551/sharing-economy>.

⁹ See Billy Hamilton, *Tax Trouble for the ‘Sharing Economy,’* STATE TAX TODAY, May 15, 2014.

¹⁰ See *Airbnb, Snapgoods and 12 More Pioneers Of The ‘Share Economy,’* FORBES, <http://www.forbes.com/pictures/eeji45emgkh/airbnb-snapgoods-and-12-more-pioneers-of-the-share-economy/> (last visited Mar. 24, 2015) (highlighting Airbnb, SnapGoods, DogVacay, RelayRides, TaskRabbit, Getaround, Liquid,

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have received high praise for their innovation and their ability to lucratively break into established industries that have grown “greedy and lazy.”¹² Sharing economy companies have benefited from operating with near zero marginal cost,¹³ few regulations,¹⁴ and through social media systems.¹⁵

However, critics, including state and local governments, have disparaged these companies for operating with questionable legality.¹⁶ In 2014, New York Attorney General Eric T. Schneiderman, subpoenaed Airbnb’s records.¹⁷ Based on the information from these records, Scheniderman drafted a critical report of Airbnb and many Airbnb hosts.¹⁸ This report stated that as many as 7 percent of Airbnb rentals violate state and local laws, and concluded that Airbnb might owe as much as \$33.4 million in taxes to New York City.¹⁹

San Francisco has also started to regulate the sharing economy.²⁰ The San Francisco ordinance,²¹ commonly known as

Zaarly, Lyft, Lending Club, Fon, SideCar, Poshmark, and Neighborgoods as examples of pioneers in the sharing economy).

¹¹ See Cohen & Zehngebot, *supra* note 4, at 6.

¹² David Streitfeld, *Airbnb Listings Mostly Illegal, New York State Contends*, N.Y. TIMES (Oct. 15, 2014), http://www.nytimes.com/2014/10/16/business/airbnb-listings-mostly-illegal-state-contends.html?_r=3; see also Tomio Geron, *Airbnb And The Unstoppable Rise Of The Share Economy*, FORBES (Jan. 1, 2013, 7:00 AM), <http://www.forbes.com/sites/tomiogeron/2013/01/23/airbnb-and-the-unstoppable-rise-of-the-share-economy/>.

¹³ Jeremy Rifkin, *Airbnb Embraces a Winning Economic Model*, PITTSBURGH POST-GAZETTE, Apr. 10, 2014.

¹⁴ Alexandra Chang, *Regulation Won’t Kill the Sharing Economy. We Just Need New Rules.*, POPULAR SCI. (July 8, 2014), <http://www.popsci.com/article/technology/regulation-wont-kill-sharing-economy-we-just-need-new-rules>.

¹⁵ Matzler et al., *supra* note 4, at 72.

¹⁶ See Cohen & Zehngebot, *supra* note 4, at 6; Hamilton, *supra* note 9.

¹⁷ *Airbnb, Inc. v. Schneiderman*, 44 Misc. 3d 351, (N.Y. Sup. Ct., May 13, 2014).

¹⁸ N.Y. STATE OFFICE OF THE ATT’Y GEN., AIRBNB IN THE CITY (2014), available at <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf>.

¹⁹ *Id.* at 9–10.

²⁰ Kim-Mai Cutler, *San Francisco Legalizes, Regulates Airbnb With 7-4 Vote, Lots of Amendments*, TECHCRUNCH (Oct. 7, 2014), <http://techcrunch.com/2014/10/07/san-francisco-airbnb/> [hereinafter Cutler, 7-4 Vote].

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the “Airbnb Law,”²² attempts to regulate a sector of the sharing economy that provides peer-to-peer, short-term property rentals, such as those rentals facilitated by Airbnb.²³ This San Francisco regulation has been controversial; an Airbnb competitor, HomeAway, filed a lawsuit challenging the constitutionality of the new regulation.²⁴

Other governments, both state and local, are also determining how to regulate the sharing economy.²⁵ The North Carolina General Assembly is set to consider the regulation of sharing economy companies in 2015.²⁶ In light of this potential decision by the state legislature, and the increasing importance of effectively regulating the rapidly growing sharing economy, this Recent Development endeavors to provide some recommendations for the General Assembly. This Recent Development examines some of the regulatory concerns associated with the sharing economy and evaluates some potential Constitutional challenges regulations might face.

Part II will define the sharing economy generally and provide an overview of the business of the sharing economy. Then, Part III will examine attempts to regulate peer-to-peer rental organizations, specifically focusing on San Francisco’s recent attempt, and will highlight potential legal and regulatory hurdles. Part IV will analyze the Constitutional arguments against regulating the sharing

²¹ S.F., Cal., Ordinance No. 218-14 (Oct. 27, 2014), *available at* <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0218-14.pdf>.

²² Steven Musil, *HomeAway Sues San Francisco to Block New ‘Airbnb Law,’* CNET (Nov. 3, 2014, 8:45 PM) <http://www.cnet.com/news/homeaway-sues-san-francisco-to-block-new-airbnb-law/>.

²³ See Cutler, *7-4 Vote*, *supra* note 20.

²⁴ Complaint, *Homeaway Inc. v. City and County of San Francisco*, 2015 U.S. Dist. LEXIS 9912 (N.D. Cal. 2015).

²⁵ See Jorge Valencia, *How Will North Carolina Tax And Regulate Airbnb And Uber?*, WUNC.ORG (Nov. 19, 2014, 8:23 AM), <http://wunc.org/post/how-will-north-carolina-tax-and-regulate-airbnb-and-uber>; Colin Campbell, *NC Legislature Looks to Regulate Uber, Airbnb*, CHARLOTTE OBSERVER (Nov. 18, 2014), <http://www.charlotteobserver.com/2014/11/18/5325605/nc-legislature-looks-to-regulate.html#.VJmqVCANk>.

²⁶ See Valencia, *supra* note 25; Campbell, *supra* note 25.

economy, specifically focusing on Substantive Due Process and Equal Protection arguments. Part V will briefly conclude.

II. THE BUSINESS OF SHARING

Although this Recent Development largely uses examples of two specific sectors of the sharing economy—peer-to-peer accommodation sharing and ride sharing—a broader overview of the sharing economy helps illustrate how this sector is developing and the legal and economic challenges it faces. This section provides a brief overview of the sharing economy, discusses the peer-to-peer accommodation sector, and then analyzes growth and changes in the sharing economy.

A. *Access is King—Background of the Sharing Economy*

The central idea behind the sharing economy is that there is “untapped potential residing in goods that are not fully exploited²⁷ by their owners.”²⁸ The sharing economy suggests that the full potential of these underexploited goods can be unlocked when the goods’ owners allow the community to access them.²⁹ By allowing community access to these goods, owners allow more people to use a specific good and spread the cost of using that good among the community by charging for the use of the good.³⁰ Thus, the sharing economy creates a community that uses its goods more efficiently, with lower costs, and with greater access. In the sharing

²⁷ Though ‘exploiting’ is often used as a negative term to describe taking advantage of a weaker entity, in this Recent Development (and in economics more generally) ‘exploiting’ simply means fully utilizing an investment or good to create maximum value for its investor. *See, e.g.,* Matzler et al., *supra* note 4, at 72.

²⁸ Matzler et al., *supra* note 4, at 72.

²⁹ *See id.* In the example of a person with a lawnmower who only uses it once a week, a lot of potential is wasted with the lawnmower just sitting in the shed, day after day—the mower is an under-exploited good. The mower’s potential could be unlocked if the owner allowed others in his neighborhood to rent the mower on the days he was not planning on using it.

³⁰ *See id.*

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economy, “[a]ccess to goods and skills [has become] more important than ownership of them.”³¹

Broadly, “anything to which access is enabled through pooling of resources, products or services” can be shared.³² This broad sharing world includes everything from renting out parking spots,³³ to hiring a temporary friend,³⁴ to sharing leftover food.³⁵ In order to better understand this world, Rachel Botsman³⁶ suggests that the sharing world can be divided into three groups: “first, product-service systems that facilitate the sharing or renting of a product (i.e., car sharing); second, redistribution markets, which enable the re-ownership of a product (i.e., Craigslist); and third, collaborative lifestyles in which assets and skills can be shared (i.e., coworking spaces).”³⁷ Airbnb and other peer-to-peer accommodation sharing companies fall under the first category.

B. *Su Casa es Mi Casa*³⁸—Peer-to-Peer Accommodation Sharing Overview

Within the product-service systems group of the sharing economy, a specific sector provides a short-term accommodation rental listing service.³⁹ Companies in this sector allow people with spare rooms, apartments, or unused houses to list these

³¹ Sacks, *supra* note 8.

³² Matzler et al., *supra* note 4, at 72.

³³ See JUSTPARK, <https://www.justpark.com> (last visited Mar. 1, 2015); PARK CIRCA, <https://www.parkcirca.com/> (last visited Mar. 1, 2015); PARK ON MY DRIVE, <https://www.parkonmydrive.com> (last visited Mar. 1, 2015).

³⁴ See RENTAFRIEND, <https://www.rentafriend.com> (last visited Mar. 1, 2015).

³⁵ See LEFTOVERSWAP, <https://http://www.leftoverswap.com> (last visited Mar. 1, 2015).

³⁶ RACHEL BOTSMAN & ROO ROGERS, *WHAT’S MINE IS YOURS: THE RISE OF COLLABORATIVE CONSUMPTION* (2010).

³⁷ Sacks, *supra* note 8.

³⁸ The traditional adage is ‘*mi casa es su casa*,’ meaning ‘my house is your house.’ The change to ‘*su casa es mi casa*,’ meaning ‘your house is my house,’ illustrates how the sharing economy allows many people to have access to one person’s resources and also highlights how the sharing economy is changing traditional industries.

³⁹ Rich Vetstein, *Airbnb Rentals Raise Thorny Legal Issues*, THE MASS. REAL EST. LAW BLOG (Jul. 24, 2014), <http://massrealestatelawblog.com/2014/07/24/airbnb-rentals-raise-thorny-legal-issues/>.

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accommodations online in order to allow others in the community to rent them.⁴⁰ These companies facilitate short-term, peer-to-peer property rentals, essentially creating “forum[s] where people run a bed and breakfast out of their own home.”⁴¹

Airbnb is the most well-known example of this specific sector of the sharing economy. In order to list a property on Airbnb, the owner must list their property with a description and photos, write a short biography, and verify their identity.⁴² Both the property host and guests can participate in a “double-blind review system” where guests rate their hosts, and hosts rate their guests.⁴³ This process requires that prospective sharers join a network where reputation and trust are often as valuable as currency.⁴⁴ Executives for sharing economy companies contend that by building rating systems and other self-policing methods into their networks, they create a reputation-based system that instills trust in their network users.⁴⁵ The effectiveness of such systems is discussed below.⁴⁶

Although Airbnb may be the most prominent of the peer-to-peer rental companies, it is certainly not the only one.⁴⁷ Airbnb’s competitors include HomeAway, a company that focuses on renting second homes,⁴⁸ Vacation Rental by Owner, which uses

⁴⁰ Charlotte Davis, *Big Changes Ahead for Airbnb and Other Lodging-share Websites?*, N.C. J.L. & TECH. (Sept. 22, 2014) <http://ncjolt.org/big-changes-ahead-for-airbnb-and-other-lodging-share-websites/>.

⁴¹ *Id.*

⁴² *Ins and Outs of Airbnb*, PORTLAND PRESS HERALD, July 21, 2014.

⁴³ Barry Smith, *Airbnb Gets A Pass From NCGA For Now*, CAROLINA JOURNAL ONLINE (Jan. 14, 2015), http://www.carolinajournal.com/exclusives/display_exclusive.html?id=11706.

⁴⁴ See Sacks, *supra* note 8. The rationale behind these networks is to establish trust between the lender and the borrower of the good. If a person decides to spend a night in a stranger’s home, both parties involved should have a way to showcase their trustworthiness to each other.

⁴⁵ See *id.*

⁴⁶ See *infra* notes 152–61 and accompanying text.

⁴⁷ Heather Yamada-Hosley, *The Best Hotel Alternatives (Besides Airbnb)*, LIFEHACKER (Sept. 9, 2014), <http://wayfarer.lifehacker.com/the-best-hotel-alternatives-besides-airbnb-1630874742>.

⁴⁸ HOMEAWAY, <http://www.homeaway.com> (last visited Mar. 1, 2015); Joshua Brustein, *An Airbnb Rival Challenges San Francisco's Airbnb Law*, BLOOMBERG BUSINESSWEEK (Nov. 3, 2014), <http://www.businessweek.com/articles/2014-11->

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a similar model to Airbnb,⁴⁹ travelmob, with a focus on Asia and the Pacific,⁵⁰ and onefinestay, which guarantees that the owners of the rentals will not be around when the renters are there.⁵¹

C. Ride Sharing

Another significant sector of the sharing economy is ride sharing.⁵² Sharing economy companies operate transportation services similar to traditional⁵³ taxi services.⁵⁴ However, ride sharing companies do not own any vehicles, do not directly hire drivers as employees, and do not have potential passengers hail rides from the side of the road.⁵⁵ Instead, ride sharing companies facilitate an exchange between local, private drivers—using their personal vehicles—and potential passengers via a smartphone application.⁵⁶ Passengers hail and pay drivers electronically.⁵⁷ The

03/san-francisco-faces-a-lawsuit-over-its-airbnb-law [hereinafter Brustein, *Airbnb Rival*].

⁴⁹ See VACATION RENTALS BY OWNER, <https://http://www.vrbo.com> (last visited Mar. 1, 2015).

⁵⁰ See TRAVELMOB, <http://www.travelmob.com> (last visited Mar. 1, 2015).

⁵¹ See ONEFINESTAY, <http://www.onefinestay.com> (last visited Mar. 1, 2015).

⁵² Ride sharing has other aliases, including ridesharing, ride-matching, and peer-to-peer services. Donald N. Anderson, “*Not Just a Taxi*”? *For-Profit Ridesharing, Driver Strategies, and VMT*, 41 *TRANSPORTATION* 1099, 1100 (2014).

⁵³ Throughout this Recent Development, the word “traditional” is used to describe various types of companies and industries that existed prior to the emergence of the sharing economy and are now being disrupted by its emergence. Sharing economy companies are characterized by their use of digital platforms to facilitate transactions, offering access instead of ownership, and promoting networks that involve deep social interactions. *The Sharing Economy: How It Will Disrupt Your Business*, PRICEWATERHOUSECOOPERS, 3 http://pwc.blogs.com/files/sharing-economy-final_0814.pdf (last visited Mar. 17, 2015). In contrast, traditional companies focus on ownership, are well-regulated, and established. Matzler et al., *supra* note 4, at 72; Dan Preston, *How The Internet Of Everything Transforms Traditional Industries*, *FORBES* (July 29, 2014, 8:43 AM), <http://www.forbes.com/sites/groupthink/2014/07/29/how-the-internet-of-everything-transforms-traditional-industries/>. Two examples of traditional industries are the taxicab industry and the hotel industry.

⁵⁴ See Anderson, *supra* note 52, at 1099–1100.

⁵⁵ See *id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 1100.

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ride sharing company takes a percentage of this fee for its role in facilitating the transaction.⁵⁸ The company also provides an online community that allows drivers and passengers to rate and evaluate each other.⁵⁹ Although the ride sharing drivers are not licensed as taxi drivers,⁶⁰ ride sharing companies often require their drivers to undergo strict background checks before they can use the company's service.⁶¹

Uber and Lyft are the market leaders in the ride sharing sector of the sharing economy. Forbes stated that Uber was worth \$18.2 billion,⁶² while the Wall Street Journal reports that Lyft is valued at \$2.5 billion.⁶³ Other companies in the ride sharing sector include Relay Rides, Sidecar, and Zimride.⁶⁴

D. *Explosion of Sharing—The Growth of Sharing Economy*

The sharing economy is not a new concept.⁶⁵ In the past, people have regularly shared with others their unused or underused

⁵⁸ *Id.*

⁵⁹ *The Sharing Economy: Boom and Backlash*, ECONOMIST (Apr. 26, 2014), <http://www.economist.com/news/business/21601254-consumers-and-investors-are-delighted-startups-offering-spare-rooms-or-rides-across-town>.

⁶⁰ Anderson, *supra* note 52, at 1100.

⁶¹ Matthew Feeney, *Is Ride Sharing Safe?*, CATO INST. at 5–8 (Jan. 27, 2015), <http://object.cato.org/sites/cato.org/files/pubs/pdf/pa767.pdf> [hereinafter Feeney, *Ride Sharing*].

⁶² Steve Bertoni, *Uber CEO Kalanick Likely A Billionaire After \$18.2 Billion Valuation*, FORBES (June 6, 2014, 3:28 PM), <http://www.forbes.com/sites/stevenbertoni/2014/06/06/uber-ceo-kalanick-likely-a-billionaire-after-18-2-billion-valuation/>.

⁶³ Douglas MacMillan, *Lyft Raises \$530 Million in Fight With Uber*, WALL ST. J. L. BLOG, (Mar. 11, 2015, 11:20 PM), <http://blogs.wsj.com/digits/2015/03/11/lyft-raises-530-million-in-fight-with-uber/>.

⁶⁴ Lyndsey Gilpin, *10 Ridesharing Companies that can Make Your Work Trip More Efficient*, TECHREPUBLIC (Nov. 18, 2014, 4:00 PM), <http://www.techrepublic.com/article/10-ridesharing-companies-that-can-make-your-work-trip-more-efficient/>.

⁶⁵ See Leo Burnett, *The Sharing Economy: Where We Go From Here*, HUMAN BEINGS 2 (2014), available at <http://humansbeing.leoburnett.com/#/leo-burnett-sheds-light/> (“The concept of sharing and peer-to-peer exchange has deep roots in American culture. Early American colonists shared tools and labor on farms, and engaged in direct buying, selling and bartering of many goods and services.

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personal resources, often for monetary gain.⁶⁶ However, the development of technology expanded the pool of potential consumers.⁶⁷ The Internet allows companies to highlight underused resources to millions of people around the world, opening up the sharing economy on an unprecedented and enormous scale.⁶⁸ For example, Airbnb claims more than 25 million guests shared their hosts' accommodations using their service in more than 34,000 cities in 190 countries.⁶⁹

The revenue growth of the sharing economy also sets this new iteration of sharing apart from traditional sharing—lending something to someone for nothing. Only four years after its founding, Airbnb recorded annual revenue of \$250 million.⁷⁰ In 2014, company valuation experts valued Airbnb at \$10 billion after it raised between \$400 and \$500 million in capital from investors.⁷¹ At \$10 billion, Airbnb's value is greater than Hyatt Hotels Corp. (\$8.4 billion) and Wyndham Worldwide Corp. (\$9.3 billion), two of the world's highest grossing hotel corporations.⁷²

Future revenue growth of the sharing economy promises to be even larger. PricewaterhouseCoopers, a company that does financial consulting among other things, found that the sharing economy generated \$15 billion in 2013, and projects that annual revenue will increase to \$335 billion in 2025,⁷³ a staggering 2,200 percent increase in 12 years.

During the early 20th century, Andrew Carnegie donated much of his personal fortune to establish a system for book sharing, the public library.”)

⁶⁶ See Cohen & Zehngelot, *supra* note 4, at 6. Vacation Rental by Owner is often referred to as “VRBO.” *Id.*

⁶⁷ See *id.* (“Forbes estimates the sharing economy generated \$ 3.5 billion in 2013.”).

⁶⁸ See Matzler et al., *supra* note 4, at 72.

⁶⁹ AIRBNB, *supra* note 1.

⁷⁰ Evelyn M. Rusli et al., *Airbnb Is in Advanced Talks to Raise Funds at a \$10 Billion Valuation*, WALL ST. J. (Mar. 21, 2014, 5:22 AM), <http://www.wsj.com/articles/SB10001424052702303802104579451022670668410>.

⁷¹ *Id.*

⁷² Heather Somerville, *Airbnb's \$10 Billion Value a Sign of Sharing-Economy Momentum*, MCCLATCHY-TRIBUNE NEWS SERVICE, Mar. 21, 2014.

⁷³ *The Sharing Economy—Sizing the Revenue Opportunity*, PRICEWATERHOUSECOOPERS, <http://www.pwc.co.uk/issues/megatrends/collisions/sharingeconomy/the-sharing-economy-sizing-the-revenue-opportunity.jhtml> (last visited Feb. 18, 2015).

E. *Changes in the Sharing Economy*

Over the past few years, the sharing economy developed quite rapidly in many different ways, including by evolving from free to commercial,⁷⁴ amateur to professional,⁷⁵ and local to global.⁷⁶ The early members of the Internet-driven sharing economy started by providing free access to goods and services.⁷⁷ Now, the sharing economy is firmly rooted in commerce.⁷⁸ As one early investor in Twitter articulated the value shift, “I’d never invest in something that’s purely warm and fuzzy.”⁷⁹

Originally, sharing resources was done in primarily local networks—early colonists sharing tools on the farm, pioneers forming wagon trains,⁸⁰ and churches organizing rummage sales for the needy.⁸¹ However, the Internet has had an amplifying effect on the sharing economy.⁸² Now Airbnb reaches over 34,000 cities worldwide,⁸³ and Uber is in more than 54 countries.⁸⁴ Sharing has gone global.

The sharing economy also shifted from amateur to professional. An increasing number of professional organizations are entering a market that was originally dominated by amateur users. The sharing economy “is supposed to offer a new kind of capitalism, one where regular folks, enabled by efficient online platforms, can turn their fallow assets into cash machines.”⁸⁵ However, some commercial organizations saw the opportunity to make substantial revenue in the sharing economy. For example, in

⁷⁴ See Sacks, *supra* note 8.

⁷⁵ William Alden, *Unfair Share*, N.Y. TIMES MAGAZINE, Nov. 30, 2014.

⁷⁶ See Burnett, *supra* note 65, at 2.

⁷⁷ Sacks, *supra* note 8 (highlighting Freecycle and CouchSurfing as early members of the sharing economy that encouraged sharing goods for free).

⁷⁸ *Id.*

⁷⁹ *Id.* (quoting venture capitalist Ann Miur-Ko).

⁸⁰ Burnett, *supra* note 65, at 2 (“Nineteenth-century pioneers headed West with pooled resources, forming wagon trains to secure the common defense.”).

⁸¹ See *id.*

⁸² *Id.*

⁸³ AIRBNB, *supra* note 1.

⁸⁴ UBER, *supra* note 2.

⁸⁵ Alden, *supra* note 75.

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New York City, commercial Airbnb renters generated thirty-seven percent of the total revenue of Airbnb users, despite representing just six percent of Airbnb hosts.⁸⁶ In fact, many Airbnb users in NYC were operating de facto hotels.⁸⁷ While the sharing economy may have started out as a way for amateurs to generate extra income from their under-utilized goods, professional users have now since joined in the sharing.⁸⁸

F. *Value of Sharing Network*

As the sharing economy has gone global, it has also become a very lucrative prospect for investors. In 2014, Uber raised \$1.2 billion in funding,⁸⁹ while Airbnb raised \$450 million.⁹⁰ After this funding, these sharing economy companies are valued by experts at \$40 billion⁹¹ and \$10 billion,⁹² respectively.⁹³ The question then becomes, what value do investors see in these sharing economy companies? The answer is complex, but can be explained in some part by these companies' abilities to operate with near zero marginal cost,⁹⁴ the potential for the sharing economy networks,⁹⁵

⁸⁶ N.Y. STATE OFFICE OF THE ATT'Y GEN., *supra* note 18, at 2.

⁸⁷ *Id.* at 12.

⁸⁸ Alden, *supra* note 75.

⁸⁹ Adam Vaccaro, *Uber Announces \$1.2 Billion Fundraising Round*, BOSTON.COM (Dec. 4, 2014, 1:20 PM), <http://www.boston.com/business/technology/2014/12/04/uber-announces-billion-fundraising-round/gTTGdGfPSaRkmC03g5QZ2J/story.html>.

⁹⁰ Alex Konrad, *Airbnb Cofounders Are Billionaires As Share Economy Leader Closes \$450 Million Round At \$10 Billion Valuation*, FORBES (Apr. 18, 2014, 4:55 PM), <http://www.forbes.com/sites/alexkonrad/2014/04/18/airbnb-closes-round-at-10-billion/>.

⁹¹ Vaccaro, *supra* note 89.

⁹² Konrad, *supra* note 90.

⁹³ Tech companies are often difficult to value because new companies have not come close to reaching their potential. When valuing these companies, a multiplier will often be used. For more information about how Airbnb and Uber were valued, see generally Barry Libert et al., *What Airbnb, Uber, and Alibaba Have in Common*, HARV. BUS. REV. (Nov. 20, 2014), <https://hbr.org/2014/11/what-airbnb-uber-and-alibaba-have-in-common> (analyzing the value of new, online-based companies).

⁹⁴ Rifkin, *supra* note 13.

⁹⁵ See *How Social Sites Make Money*, USBUNDLES.COM, <http://www.usbundles.com/how-social-sites-make-money>; Lois Beckett, *Yes, Companies Are Harvesting—*

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and the ability of the sharing economy Internet platforms to create a monopoly.⁹⁶

Marginal cost “is the cost of producing an additional unit of a good or service once a business has its fixed costs in place.”⁹⁷ For a traditional hotel chain, marginal cost would be the cost of adding an extra room to its inventory.⁹⁸ For a peer-to-peer accommodation sharing company, marginal cost would be adding another listing to its website.⁹⁹ Peer-to-peer companies shift the cost of physical inventory expansion onto a third parties¹⁰⁰—somebody else builds the accommodation, while the sharing company simply provides the listing. Since the marginal cost is significantly less for the peer-to-peer sharing company than the traditional hotel chain, the sharing company can add to its inventory significantly with little to no additional cost.¹⁰¹ Meanwhile, the traditional chain can expand only by creating a new hotel, expanding an old one, or renting a new space.¹⁰² The low cost of adding additional inventory makes many sharing economy companies attractive options for investors.

In addition to the low cost of inventory expansion, many sharing economy companies are creating vast online networks for their users.¹⁰³ For example, Uber has more than 8 million users,¹⁰⁴

and Selling—Your Facebook Profile, PROPUBLICA (Nov. 9, 2012, 1:09 PM), <http://www.propublica.org/article/yes-companies-are-harvesting-and-selling-your-social-media-profiles>.

⁹⁶ Sebastian Olma, *Never Mind the Sharing Economy: Here’s Platform Capitalism*, INST. OF NETWORK CULTURES (Oct. 16, 2014, 8:39 PM), <http://networkcultures.org/mycreativity/2014/10/16/never-mind-the-sharing-economy-heres-platform-capitalism/>.

⁹⁷ Rifkin, *supra* note 13.

⁹⁸ *Id.*

⁹⁹ *Id.* Additional server and web hosting space is one of the only real increased costs the sharing economy companies might face from adding new inventory.

¹⁰⁰ See *The Rise of the Sharing Economy*, ECONOMIST (Mar. 9, 2013), <http://www.economist.com/news/leaders/21573104-internet-everything-hire-rise-sharing-economy>.

¹⁰¹ Rifkin, *supra* note 13.

¹⁰² See *id.*

¹⁰³ See Sacks, *supra* note 8.

¹⁰⁴ Craig Smith, *By the Numbers 15 Amazing Uber Statistics*, DIGITAL MARKET RAMBLINGS (Jan. 24, 2015), <http://expandedramblings.com/index.php/uber-statistics/>.

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and Airbnb has more than 500,000 property listings.¹⁰⁵ In order to encourage sharing of personal items such as a person's home or the use of their car, companies must establish trust between users.¹⁰⁶ Companies require users to share personal information on the companies' networks. This information may include a user's photo, pictures of a user's home, and any materials gained from reviews written by and about the user.¹⁰⁷ Companies with these networks then harvest users' information, selling it to other companies,¹⁰⁸ using it for targeted advertising,¹⁰⁹ or both. The economic potential of these information networks can be enticing to investors.

As these sharing economy networks continue to attract more users, their ability to reach a monopoly position in their sector increases.¹¹⁰ As one journalist writing for Salon pointed out, many large Silicon Valley companies have followed a pattern: "[f]irst lure them in and establish your monopoly, then monetize."¹¹¹ In order to do this, a sharing economy company identifies a core market.¹¹² Then the company offers its services at a low price to capture a share of the market.¹¹³ The company builds up a critical mass of users within its core market, making it an attractive option for buyers and sellers.¹¹⁴ Once the company captures this monopoly share, they can use their powerful algorithms to manipulate the

¹⁰⁵ Gregory Ferenstein, *Uber and Airbnb's Incredible Growth in 4 Charts*, VENTURE BEAT, (June 19, 2014, 6:00 AM) <http://venturebeat.com/2014/06/19/uber-and-airbnbs-incredible-growth-in-4-charts/>.

¹⁰⁶ See Sacks, *supra* note 8.

¹⁰⁷ See *Ins and Outs of Airbnb*, *supra* note 42.

¹⁰⁸ Beckett, *supra* note 95.

¹⁰⁹ See *How Social Sites Make Money*, *supra* note 95.

¹¹⁰ See Richard (RJ) Eskow, *Silicon Valley Will Destroy Your Job: Amazon, Facebook and Our Sick New Economy*, SALON (Oct. 24, 2014, 6:59 AM), http://www.salon.com/2014/10/24/silicon_valley_will_destroy_your_job_amazon_facebook_and_our_sick_new_economy/.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

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prices of the services offered.¹¹⁵ In order to maintain their monopolies and expand monopolies into other market areas, more established companies will purchase newer companies as Google did with YouTube.¹¹⁶ Companies with the ability to create monopolies in their specific sectors have incredible value to investors.

The rapid increase in the number of users and the huge financial growth of the sharing economy are causing state and local governments, such as those in North Carolina, to begin regulating the sharing economy.¹¹⁷

III. MORE MONEY, MORE PROBLEMS¹¹⁸—STATE AND LOCAL REGULATION OF THE PEER-TO-PEER ACCOMMODATION SHARERS

In the past, small-scale sharing has generally either been ignored by the legal system or unregulated.¹¹⁹ However, as the sharing economy has ballooned and become increasingly lucrative,¹²⁰ the companies involved are becoming harder for regulators to ignore.¹²¹ Lawmakers and other businesses have pushed for increasing regulations on the sharing economy,¹²² though there remain concerns over how best to regulate it.¹²³

¹¹⁵ Olma, *supra* note 96. A good example of this is Uber's surge pricing during peak demand, which can spike prices of a ride up to seven times their normal value. The way that this works is that when demand for rides spikes, Uber's algorithm elevates the price of a ride to many times the price of a normal ride. *Pricing the Surge*, *Free Exchange*, *ECONOMIST* (Mar. 29, 2014, 3:58 PM), <http://www.economist.com/news/finance-and-economics/21599766-economics-ubers-attempt-revolutionise-taxi-markets-pricing-surge>.

¹¹⁶ Eskow, *supra* note 110.

¹¹⁷ See Valencia, *supra* note 25.

¹¹⁸ See THE NOTORIOUS B.I.G., *Mo Money, Mo Problems*, on *LIFE AFTER DEATH* (Bad Boy Records 1997).

¹¹⁹ Cohen & Zehngbot, *supra* note 4, at 6 ("though barter exchange is taxable").

¹²⁰ *Id.* ("Forbes estimates the sharing economy generated \$3.5 billion in 2013."); Hamilton, *supra* note 9. ("[T]he consumer peer-to-peer rental market alone is worth \$26 billion.")

¹²¹ Streitfeld, *supra* note 12.

¹²² See, e.g. *id.* ("Mr. Schneiderman and city regulators will also announce Thursday a joint enforcement initiative to shut down illegal hotels. Various

A. *Attempts at Regulation*

San Francisco, the birthplace of Airbnb, recently attempted to regulate the sharing economy by enacting an ordinance targeting short-term, peer-to-peer rental companies.¹²⁴ The San Francisco ordinance, colloquially known as the “Airbnb law,” has been controversial, with a lawsuit filed over the constitutionality of these regulations.¹²⁵ However, as one of the most recent and largest cities to enact new regulations for the shared economy, San Francisco’s new regulations are worth examining.

The San Francisco ordinance endeavored to strike a balance between allowing short-term rentals for those people that needed the extra money and trying to eliminate apartment complexes that were turning into de facto hotels.¹²⁶ In order to accomplish these goals, the new ordinance enforced requirements on the hosts of the properties, while leaving the peer-to-peer sharing companies largely unaffected.¹²⁷

The new ordinance creates a public registry of hosts.¹²⁸ Hosts must pay a one-time \$50 fee every two years and register with the

regulators will investigate violations of building and safety codes and tax regulations.”).

¹²³ See, e.g. Arun Sundararajan et al., *Regulating the Sharing Economy*, N.Y. TIMES (May 6, 2014) <http://www.nytimes.com/roomfordebate/2014/05/06/regulating-the-sharing-economy> (debating how the sharing economy should be regulated).

¹²⁴ S.F., Cal, Ordinance No. 218-14 *supra* note 21; see Cutler, 7-4 *Vote*, *supra* note 20.

¹²⁵ Cutler, 7-4 *Vote*, *supra* note 20; Brustein, *Airbnb Rival*, *supra* note 48. The lawsuit centered around language that permitted short term rentals only when a “Permanent Resident occupies the Residential Unit for no less than 275 days out of the calendar year in which the Residential Unit is rented as a Short-Term Residential Rental.” S.F., Cal, Ordinance No. 218-14, *supra* note 21, at 17; HomeAway Inc. v. City & County of San Francisco, 2015 U.S. Dist. LEXIS 9912 *3 (N.D. Cal. Jan. 27, 2015).

¹²⁶ See David Chiu, *A Reasonable Airbnb Plan for The City*, THE EXAMINER (Oct. 7, 2014), <http://www.sfexaminer.com/sanfrancisco/a-reasonable-airbnb-plan-for-the-city/Content?oid=2908423>.

¹²⁷ See Joshua Brustein, *Airbnb Gets Off Easy in San Francisco. Hosts? Not So Much*, BLOOMBERG BUSINESS (Oct. 8, 2014), <http://www.bloomberg.com/bw/articles/2014-10-08/airbnb-gets-off-easy-in-san-francisco-dot-its-hosts-not-so-much>.

¹²⁸ Cutler, 7-4 *Vote*, *supra* note 20.

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city planning department.¹²⁹ Hosts are also now required to pay hotel taxes to the sharing economy company, which the sharing economy companies will then remit to the city on behalf of the hosts.¹³⁰ Additionally, hosts must have homeowner's insurance with liability coverage of at least \$500,000 and abide by building codes.¹³¹ Rental spaces that do not have hosts, non-hosted rentals,¹³² are limited to ninety days of short term renting per year.¹³³ Consequences of non-compliance range from paying civil penalties of up to \$1,000 per day,¹³⁴ to suspension of registration.¹³⁵

Despite taking nearly two years to craft,¹³⁶ the Airbnb law has left some dissatisfied.¹³⁷ Many critics of the new ordinance would like to have the ninety-day per year limit apply to all rentals, because they claim it is difficult to distinguish hosted rentals from non-hosted rentals.¹³⁸ In addition, critics argue that many provisions in the law are functionally unenforceable.¹³⁹ Even if the law can be enforced, the \$50 fee, paid for a two-year period, may not provide enough funding for the government to support an effective enforcement framework.¹⁴⁰ Any effort to ensure compliance would face the 5,000 Airbnb rentals and 1,200 HomeAway rentals San Francisco sees each night.¹⁴¹ Although San Francisco has taken a big step forward in regulating part of the sharing economy,

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Non-hosted rentals are rental properties where the owner is not the primary resident. Some examples of non-hosted rentals are apartment complexes and second homes.

¹³³ Kim-Mai Cutler, *It's Decision Day for Airbnb in San Francisco*, TECHCRUNCH (Oct. 7, 2014), <http://techcrunch.com/2014/10/07/airbnb-sf/> [hereinafter Cutler, *Decision Day*].

¹³⁴ S.F., Cal, Ordinance No. 218-14, *supra* note 21, at 22.

¹³⁵ *Id.* at 19.

¹³⁶ David Chiu, *A Reasonable Airbnb Plan for The City*, EXAMINER (Oct. 7, 2014), <http://www.sfoxaminer.com/sanfrancisco/a-reasonable-airbnb-plan-for-the-city/Content?oid=2908423>.

¹³⁷ Cutler, *7-4 Vote*, *supra* note 20.

¹³⁸ *Id.*

¹³⁹ Cutler, *Decision Day*, *supra* note 133.

¹⁴⁰ Cutler, *7-4 Vote*, *supra* note 20.

¹⁴¹ *Id.*; Musil, *supra* note 22.

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questions remain about several practical aspects of the new regulations and whether the attempted goals are worthwhile.

The city of Raleigh, North Carolina, is considering regulating the sharing economy.¹⁴² As part of this process, Travis Crane, the Raleigh City Planning and Zoning Administrator, compiled a report on “best practices related to short term residential rentals.”¹⁴³ In this report, Mr. Crane evaluated thirteen different cities¹⁴⁴ that have approved sharing economy short-term rentals.¹⁴⁵ Mr. Crane noted that ten of the cities required the rental hosts to be licensed and pay a fee.¹⁴⁶ Additionally, six of the cities required that the rental properties undergo a safety inspection.¹⁴⁷

Mr. Crane’s report detailed three recommendations for the Raleigh City Council to consider: (1) maintain existing regulations, (2) “[a]uthorize a text change to amend the [Raleigh] Unified Development Ordinance,” expanding zoning availability for and standards for short-term rentals, and (3) require a special use permit for hosts to operate in certain districts.¹⁴⁸ By maintaining the existing regulations, Mr. Crane wants to allow short-term rentals to continue in the zoning areas that already allow for these rentals.¹⁴⁹ A text change to the Unified Development Ordinance would set standards¹⁵⁰ for short-term rentals and expand the areas in which they are allowed to operate.¹⁵¹

¹⁴² Smith, *supra* note 43.

¹⁴³ TRAVIS R. CRANE, SHORT-TERM ONLINE RENTALS REPORT, at 2 (Jan. 9, 2015), available at <http://www.wral.com/asset/news/local/2015/01/20/14370331/AirbnbReport.pdf>.

¹⁴⁴ Portland, OR; Seattle, WA; San Francisco, CA; San Diego, CA; Palm Springs, CA; Phoenix, AZ; Las Vegas, NV; Austin, TX; Madison, WI; Chicago, IL; Miami, FL; Charleston, SC; and Washington DC. *Id.* at Attachment 2.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 5.

¹⁴⁹ *Id.*

¹⁵⁰ Standards “could include a definition of the use, appropriate zoning districts for the use, standards related to occupancy, size and parking, and a business process for licensing, permitting, registration and inspection.” *Id.*

¹⁵¹ *Id.*

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As the General Assembly considers regulating the sharing economy, they would do well to follow Mr. Crane's example and evaluate the best practices of locations that have already regulated sharing economy companies, both inside and outside of North Carolina.

B. Consumer Protection

When companies act as large-scale facilitators in many transactions between numerous individuals, consumer protection becomes a concern.¹⁵² One solution is for companies to maintain internal methods for consumer protections, such as consumer rating systems.¹⁵³ Many sharing economy companies investing in this method find that rating systems foster a sense of community and are relatively inexpensive to implement.¹⁵⁴

However, rating systems are not perfect and do not account for inadvertent racial discrimination. Research conducted by two Harvard Business School professors found such discrimination when analyzing property listings on Airbnb.¹⁵⁵ These professors attributed the discrimination to the hosts' profile pictures—generally displaying hosts' faces—that Airbnb prominently displays for its property listings.¹⁵⁶ Because of these profile pictures, potential Airbnb renters are less likely to select places hosted by African Americans.¹⁵⁷ Thus, African American hosts have more trouble initially attracting guests and thus must lower the prices of their rentals in order to be able to compete with other listings.¹⁵⁸ As a result, African American hosts charged twelve percent less for rentals than non-African American hosts for properties of similar location and property value in order to be

¹⁵² Cohen & Zehngbot, *supra* note 5, at 7.

¹⁵³ *See id.*

¹⁵⁴ *Id.*

¹⁵⁵ Carmen Nobel, *Racial Discrimination In The Sharing Economy*, FORBES (Feb. 24, 2014, 10:24 AM) <http://www.forbes.com/sites/hbsworkingknowledge/2014/02/24/racial-discrimination-in-the-sharing-economy/>.

¹⁵⁶ *Id.*

¹⁵⁷ *See id.*

¹⁵⁸ *Id.*

competitive with other hosts.¹⁵⁹ Additionally, these professors found that African American hosts face a “larger price penalty for having a poor location score” than non-African American hosts for having a poor property location.¹⁶⁰

Inadvertent racial discrimination is a serious problem for this peer-to-peer network that some consumer protection solutions, such as consumer ratings, fail to address. However, the Harvard Professors suggest inadvertent discrimination may be reduced by system design—having sharing economy companies design their websites in ways that downplay discriminatory factors such as race and gender.¹⁶¹ The North Carolina General Assembly should consider implementing checks and oversight of sharing economy networks to ensure that these networks are designed in ways that work to reduce discriminatory tendencies.

C. Taxation

Taxation may also be an issue for those operating in the sharing economy.¹⁶² Taxation often relies on how the law classifies persons or businesses; for sharing economy participants, those classifications remain unclear.¹⁶³ Are drivers for Uber a franchise, small business, or none of the above?¹⁶⁴ Do Airbnb users need to pay occupancy taxes?¹⁶⁵ Additionally, governments cannot reliably enforce existing tax laws on sharing economy participants.¹⁶⁶ Airbnb’s CEO, Brian Chesky, told Airbnb’s hosts, “you are microentrepreneurs, and there are no laws written for microentrepreneurs.”¹⁶⁷ Statements such as these may indicate to members of the sharing economy that there may not be rules for them to follow or taxes to pay. Additionally, while Airbnb instructs its hosts to abide by federal, state, and local laws, these

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Nobel, *supra* note 155.

¹⁶² Hamilton, *supra* note 9.

¹⁶³ *See* Cohen & Zehngbot, *supra* note 4, at 7; *see* Hamilton, *supra* note 9.

¹⁶⁴ *See* Cohen & Zehngbot, *supra* note 4, at 7.

¹⁶⁵ *See id.*

¹⁶⁶ *See* Hamilton, *supra* note 9.

¹⁶⁷ *See id.*

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governments have not traditionally tasked Airbnb with making sure that hosts comply with any laws, including tax laws.¹⁶⁸ Hosts have generally been solely responsible for ensuring compliance with these relevant tax laws.¹⁶⁹ In addition, housing laws and regulations can vary significantly from municipality to municipality, and sometimes even between neighborhoods, which creates a lot of confusion about who is taxed on what and at what rate.¹⁷⁰

The North Carolina Revenue Laws Study Committee (“Committee”) has already begun looking at the taxation issues of the sharing economy in North Carolina.¹⁷¹ The Committee expressed concern with the undercompliance of North Carolina short-term rental hosts in remitting taxes to state and local governments.¹⁷² Under North Carolina state law, owners of private residences who rent their residences for less than fifteen days a year need not pay state taxes on the income from those rentals.¹⁷³ However, once an owner passes that fifteen-day threshold, they must pay state taxes.¹⁷⁴

The Committee’s recommendation to fix this undercompliance issue is to require sharing economy companies to remit the tax on behalf of their users.¹⁷⁵ The Committee also suggests that current North Carolina state law may already require sharing economy companies to do this, as they may qualify as “facilitators.”¹⁷⁶ A facilitator is “[a] person who is not a rental agent and who

¹⁶⁸ *See id.*

¹⁶⁹ *See id.*

¹⁷⁰ *See* Cohen & Zehngelot, *supra* note 4, at 7.

¹⁷¹ 2013–2014 REVENUE LAWS STUDY COMMITTEE, REPORT TO THE 2015–2016 GENERAL ASSEMBLY, 2015 Session, at 12, *available at* <http://www.ncleg.net/DocumentSites/committees/revenuelaws/Meeting%20Documents/2013-2014%20Meeting%20Documents/2015%20-%2001.13/Draft%20Report.pdf>.

¹⁷² *Id.*

¹⁷³ N.C. GEN. STAT. § 105-164.4F(e)(1) (2014).

¹⁷⁴ *See id.*

¹⁷⁵ 2013–2014 REVENUE LAWS STUDY COMMITTEE, *supra* note 171 at 13. This suggested fix is similar to San Francisco’s requirement for short-term rental tax remittance discussed in Section of Part III of this Recent Development. *See* discussion *supra* Part III.

¹⁷⁶ *Id.*; *see* § 105-164.4F(a)(2) (2014).

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contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation.”¹⁷⁷ Facilitators have tax remittance obligations under North Carolina General Statutes.¹⁷⁸

The Committee makes two recommendations to the General Assembly in order to remedy undercompliance.¹⁷⁹ First, the Committee proposes “amend[ing] the statutes to more specifically require sites like Airbnb to collect sales and occupancy tax.”¹⁸⁰ Second, the Committee recommends that the state government create a statewide central collection point for occupancy tax.¹⁸¹ In North Carolina, “occupancy tax is collected at the local level by the unit of government that levies it, which means that there are over 150 collectors of the occupancy tax” across the state.¹⁸² This second recommendation would make compliance with tax law easier for the sharing economy companies. However, as the Committee aptly points out, creating a central collection point would “generate new responsibilities and expense for the [State] Department of Revenue.”¹⁸³

Instead of adopting this second recommendation, the General Assembly should require that the sharing economy companies remit local occupancy taxes directly to local governments. In order to function, short-term rental sharing economy companies are directly in local communities¹⁸⁴—providing access to local resources (ex. spare rooms) in order to generate income. As such, these companies benefit heavily from local amenities—roads, tourist attractions, etc. Requiring these companies to remit taxes directly to local governments would ensure that the taxes go directly to the

¹⁷⁷ § 105-164.4F(a)(2) (2014).

¹⁷⁸ *Id.* at § 105-164.4F(c) (2014); 2013–2014 REVENUE LAWS STUDY COMMITTEE, *supra* note 171 at 13.

¹⁷⁹ 2013–2014 REVENUE LAWS STUDY COMMITTEE, *supra* note 171 at 13.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 14.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ See *The Rise of the Sharing Economy*, ECONOMIST (Mar. 9, 2013), <http://www.economist.com/news/leaders/21573104-internet-everything-hire-rise-sharing-economy>.

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local governments that fund these amenities¹⁸⁵ and would foster relationships and understanding between the companies and local governments. These relationships could lead to long-term benefits for both parties, including increased revenue for the local governments and favorable zoning regulations for the companies.

Additionally, sharing resources more efficiently is the foundation of the sharing economy. Creating new expensive bureaucracy and additional steps for local governments goes directly against this sharing economy foundation.

D. *Liability*

Questions of liability are also an issue for many sharing economy companies.¹⁸⁶ Sharing economy companies often shift the risk of sharing resources onto the people that provide the goods or services.¹⁸⁷ For example, Uber placed the risk on drivers by asking them “to push damage claims through their personal insurance companies while knowing that those companies did not cover commercial activity.”¹⁸⁸

Until January 2015, Airbnb expected its hosts to assume the full liability risk even though most “homeowner’s and renter’s insurance policies do not cover regular commercial activity in the home.”¹⁸⁹ To help share the liability risk, Airbnb now provides free liability insurance to hosts of up to \$1 million per incident.¹⁹⁰ However, this insurance will act as either primary or secondary coverage depending on if hosts already have insurance.¹⁹¹ However,

¹⁸⁵ As opposed to going to the state government as recommended by the Committee.

¹⁸⁶ Cohen & Zehngbot, *supra* note 4, at 8.

¹⁸⁷ Ron Lieber, *A Liability Risk for Airbnb Hosts*, N.Y. TIMES (Dec. 5, 2014), http://www.nytimes.com/2014/12/06/your-money/airbnb-offers-homeowner-liability-coverage-but-hosts-still-have-risks.html?_r=1.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *What is Host Protection Insurance?*, AIRBNB (Jan. 2015), <https://www.airbnb.com/help/article/937>.

¹⁹¹ HOST PROTECTION INSURANCE, AIRBNB, <https://www.airbnb.com/host-protection-insurance> (last visited Mar. 17, 2015).

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this option could get very expensive, very quickly.¹⁹² Instead of free insurance, HomeAway offers its hosts the option to purchase primary insurance before using their service.¹⁹³ The sharing economy is still working through the best ways to share liability.

The North Carolina Revenue Committee does not directly discuss the potential liabilities that sharing economy presents in their report to the General Assembly.¹⁹⁴ However, they do mention concerns with health and safety for guests. The Committee notes that “establishments with four or fewer lodging units and private homes that occasionally offer lodging” are exempt from health and safety regulations that are required for traditional hotels.¹⁹⁵

E. *Zoning Issues*

Peer-to-peer rental companies are very concerned with zoning. Zoning codes often draw sharp lines of demarcation for land use.¹⁹⁶ If a municipality has zoned an area for residential use, property owners might violate the code if they rent out a spare room or unused apartment¹⁹⁷ Even if short-term rentals are allowed, there may still be a question regarding how many days per year a host could rent a room or apartment.¹⁹⁸ Because of the hyper-local nature of zoning, there is no consensus (and often much confusion) on whether zoning codes are flexible.

¹⁹² Lieber, *supra* note 187 (“Scott Wolf, president of the program division for CBIZ Insurance Services, which provides the Assure policy, broke the host’s cost down: For a \$1 million, four-bedroom home with contents worth \$100,000, the annual cost of coverage would be about \$3,000, which includes any damage, liability coverage and replacement of rental income in case the home is temporarily uninhabitable. Most Airbnb properties are worth less than this, its hosts may rent only part of their homes and do so less often, and the company would get a bulk discount if it were to buy coverage for all of them. Still, multiply that times 800,000 listings and it’s easy to see why it’s out of the question for Airbnb to hand out primary coverage to everyone.”).

¹⁹³ Lieber, *supra* note 187.

¹⁹⁴ 2013–2014 REVENUE LAWS STUDY COMMITTEE, *supra* note 171.

¹⁹⁵ *Id.* at 14.

¹⁹⁶ Cohen & Zehngbot, *supra* note 4, at 8.

¹⁹⁷ *Id.*

¹⁹⁸ See, e.g. S.F., Cal, Ordinance No. 218-14, *supra* note 21, at 22 (limiting non-hosted rentals to 90 rented days per year).

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In Raleigh, there are four types of short-term lodging allowed: (1) bed and breakfast, (2) hospitality house, (3) hotel, motel, inn, and (4) youth hostel.¹⁹⁹ According to Mr. Crane’s report to the Raleigh City Manager, short-term sharing economy rentals would likely fall into the bed and breakfast category.²⁰⁰ Raleigh defines a bed and breakfast as “a detached house or other structure constructed for a use permitted within the district that has no more than 5 guest rooms. Breakfast is customarily served to guests.”²⁰¹ Currently, city law allows bed and breakfasts only “within a historic district, historic landmark, or on a property listed in the National Register of Historic Places.”²⁰² This effectively excludes bed and breakfasts from most residential areas.²⁰³

Mr. Crane’s report details several impacts that short-term rentals can have on residential zones, including increased traffic on neighborhood streets, increased numbers of people in neighborhoods, and conflict with unit density regulations.²⁰⁴ As Mr. Crane points out, businesses typically must apply for a special use permit in order to operate in residential areas, and this permit allows for only two employees and limited customer activity.²⁰⁵ Residentially zoned areas in Raleigh also have unit density maximums that short-term rentals would violate.²⁰⁶ For example, since residential zoning in Raleigh allows a dwelling unit to be comprised of four unrelated persons, allowing a short-term renter to stay in this unit would constitute a density violation.²⁰⁷

¹⁹⁹ RALEIGH, N.C., PART 10A: UNIFIED DEVELOPMENT ORDINANCE, Section 6.4.6(A) (2013).

²⁰⁰ See CRANE, *supra* note 143, at 1–2 (Jan. 9, 2015).

²⁰¹ RALEIGH, N.C., PART 10A, *supra* note 199, Section 6.4.6(B).

²⁰² CRANE, *supra* note 143, at 2.

²⁰³ *Id.*

²⁰⁴ *Id.* at 3.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.* (“Residential zoning contains density maximums, expressed as units per acre. A dwelling unit may be comprised of a family related by blood, marriage or adoption, or by four unrelated persons. If a dwelling unit that contains four unrelated persons allows a traveler as a short-term rental, a density violation would exist.”).

F. *Affordable Housing*

Local governments are often concerned with ensuring the availability of affordable housing. With the advent of peer-to-peer accommodation sharing sites, many landlords are listing their rentals with sharing economy sites as short-term rentals instead of having these rentals available for long-term tenants.²⁰⁸ These short-term rentals often provide property owners with a more lucrative rental opportunity than longer-term rentals.²⁰⁹ Renting this way can reduce the availability of housing for local residents and drive up rental costs in the area.²¹⁰

Cities like San Francisco and New York City face both increasing housing prices and affordable housing shortages.²¹¹ With many apartment buildings using sharing economy websites to turn into de facto hotels²¹²—virtually removing these apartments from the long-term housing marketplace²¹³—cities might lose their affordable, long-term housing to lucrative, short-term renting.²¹⁴

In North Carolina, state government officials believe that the sharing economy could hurt the available housing market.²¹⁵ In a N.C. General Assembly Revenue Laws Study Committee meeting, participants discussed the potential of “[r]educ[ed] housing stock available” to local residents as a primary reason to restrict the

²⁰⁸ See Rachel Monroe, *More Guests, Empty Houses: Airbnb is Great for Tourists. Is it Great for the Housing Market?*, SLATE (Feb. 13, 2014, 8:08 AM), http://www.slate.com/articles/business/moneybox/2014/02/airbnb_gentrification_how_the_sharing_economy_drives_up_housing_prices.html.

²⁰⁹ *Id.*

²¹⁰ *See id.*

²¹¹ *See id.*

²¹² *Id.*

²¹³ Annie Karni, *Apartment-sharing Websites Like Airbnb.com Pose ‘Concerns’ for New York City, Controller Says*, N.Y. DAILY NEWS (Jan. 19, 2015, 11:32 PM), <http://www.nydailynews.com/news/national/city-controller-airbnb-poses-concerns-city-article-1.2084690>.

²¹⁴ *Id.*

²¹⁵ REVENUE LAWS STUDY COMMITTEE, THE SHARING ECONOMY, slide 17 (Nov. 18, 2014), available at <http://www.ncleg.net/DocumentSites/committees/revenuelaws/Meeting%20Documents/2013-2014%20Meeting%20Documents/2014%20-%202011.18/The%20Sharing%20Economy.pdf>.

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short-term rental sharing economy.²¹⁶ In order to address these concerns, the General Assembly should either put a maximum cap on the number of days allowed for short-term rentals, or mandate that local communities institute their own cap.

**IV. CONSTITUTIONAL CHALLENGES TO PEER-TO-PEER
ACCOMMODATION SHARING**

As state and local governments begin to regulate the sharing economy, constitutional challenges will be—and in some cases, are already being—raised with regards to these regulations.²¹⁷ Part IV analyzes the equal protection and substantive due process arguments for and against regulating the sharing economy.

*A. Harder, Better, Faster, Stronger*²¹⁸

Companies in the sharing economy utilize technology in a way that disrupts traditional industries.²¹⁹ Disrupting, in this sense, means that sharing economy companies often find ways to deliver an equal or better product at less cost than traditional methods.²²⁰ For example, one price comparison of Airbnb and hotels found that renting a room in an apartment on Airbnb cost only half as much as renting a hotel room in the same city.²²¹ Renting an entire apartment on Airbnb cost 21.2 percent less than a hotel room.²²² Another study found that Uber is less expensive than taxi service

²¹⁶ *Id.*

²¹⁷ *See, e.g.,* HomeAway Inc. v. City & County of San Francisco, 2015 U.S. Dist. LEXIS 9912 (N.D. Cal. Jan. 27, 2015) (analyzing whether the Commerce Clause was violated as a result of a newly enacted San Francisco ordinance regulating short-term rentals).

²¹⁸ DAFT PUNK, *Harder, Better, Faster, Stronger*, on DISCOVERY (Virgin Records 2001).

²¹⁹ Arun Sundararajan, *Services, like Airbnb, Mean We Need to Adapt to a New Economy*, N.Y. TIMES (May 6, 2014), <http://www.nytimes.com/roomfordebate/2014/05/06/regulating-the-sharing-economy/services-like-airbnb-mean-we-need-to-adapt-to-a-new-economy>.

²²⁰ *See* Geron, *supra* note 12.

²²¹ *Airbnb vs Hotels: A Price Comparison*, PRICEONOMICS (June 17, 2013), <http://priceonomics.com/hotels/>.

²²² *Id.*

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in every major city in America, except for New York and Philadelphia.²²³

These sharing economy companies have proven that they can offer equal or better services for less cost outside of the current regulatory framework. Unsurprisingly, traditional companies are not happy about this disruption.²²⁴ As the sharing economy has grown, calls for sharing economy companies to be regulated in the traditional ways have grown louder.²²⁵ Traditional companies have relied on Constitutional arguments of equal protection and substantive due process to advocate that sharing economy companies should be similarly regulated.²²⁶ However, these arguments have generally failed for two reasons: (1) courts treat sharing economy companies and traditional industry companies as different types of companies, and (2) it is difficult to find a rational basis for regulating sharing economy companies under the regulatory framework for traditional industries.

B. *Constitutional Case Law So Far*

Thus far, traditional companies have used equal protection and substantive due process arguments to challenge new regulations that effectively permit sharing economy companies to operate

²²³ Sara Silverstein, *These Animated Charts Tell You Everything About Uber Prices In 21 Cities*, BUSINESS INSIDER (Oct. 16, 2014, 12:47 PM), <http://www.businessinsider.com/uber-vs-taxi-pricing-by-city-2014-10>.

²²⁴ See e.g. Larry Downes, *Industries Just Want to Protect Their Turf*, N.Y. TIMES (July 9, 2014, 2:22 PM), <http://www.nytimes.com/roomfordebate/2014/05/06/regulating-the-sharing-economy/industries-just-want-to-protect-their-turf> (“Old-fashioned taxicab, hotel and trade associations are more interested in protecting their turf than in competing with the disruptors.”).

²²⁵ See e.g. “*Sharing economy*” *Debate Heats Up in NC*, NORTH CAROLINA ASSOCIATION OF REALTORS (Feb. 6, 2015), <http://www.ncrealtors.org/overview-government-affairs-public-menu/319-site-category/government-affairs-news-category/659-sharing-economy-debate-heats-up.html> (“The North Carolina Association of REALTORS® [“NCAR”] seeks to protect public safety by advocating that all rental vacation businesses are licensed, insured, and inspected. NCAR will support legislation proposed in the General Assembly that regulates the sharing economy in North Carolina through hotel and occupancy taxation.”).

²²⁶ See e.g. *Boston Taxi Owners Ass'n v. City of Boston*, 2015 U.S. Dist. LEXIS 14564 (D. Mass. Feb. 5, 2015).

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under less regulatory scrutiny than traditional companies.²²⁷ These traditional companies have either sought negative injunctions to stop the newly enacted regulations from being enforced, affirmative injunctions to require their municipalities to enforce existing regulations (developed for traditional companies) on sharing economy companies, or both.²²⁸

For equal protection challenges, traditional companies believed that new laws specifically targeting sharing economy companies provided unequal treatment of new competitors operating in a similar space for a similar customer base. This perceived unequal treatment provided the equal protection rationale for the injunctions. For example, in *Boston Taxi Owners Ass'n v. City of Boston*,²²⁹ the Boston Taxi Owners Association and two taxicab license owners raised a constitutional challenge to regulations that “establish[ed] standards for the registration of motor vehicles providing services for so-called Transportation Network Companies (“TNCs”), such as Uber, Lyft and Sidecar.”²³⁰ The traditional licensed taxicab owners and operators challenged regulations allowing sharing economy companies to provide passenger services to a similar customer in a similar mode of transportation (people seeking vehicular transportation in exchange for money) with fewer regulatory requirements.²³¹

The substantive due process right allegedly infringed was an economic one: devaluing the right of the traditional company to operate exclusively within the municipality.²³² In *Boston Taxi*, the plaintiffs challenged the ability of sharing economy companies to operate their taxi services in Boston.²³³ In Boston, taxi operators

²²⁷ See *id.* at *7; *Joe Sanfelippo Cabs Inc. v. City of Milwaukee*, 2014 U.S. Dist. LEXIS 128026, at *1 (E.D. Wis. Sept. 12, 2014).

²²⁸ *Joe Sanfelippo Cabs Inc.*, 2014 U.S. Dist. LEXIS 128026, at *3; *Boston Taxi Owner's Ass'n*, 2015 U.S. Dist. LEXIS 14564, at *7.

²²⁹ 2015 U.S. Dist. LEXIS 14564 (D. Mass. Feb. 5, 2015)

²³⁰ *Id.* at *2.

²³¹ *Joe Sanfelippo Cabs Inc.*, 2014 U.S. Dist. LEXIS 128026, at *1; *Boston Taxi Owners Ass'n*, 2015 U.S. Dist. LEXIS 14564, at *1.

²³² See *Joe Sanfelippo Cabs Inc.*, 2014 U.S. Dist. LEXIS 128026, at *7; *Boston Taxi Owners Ass'n*, 2015 U.S. Dist. LEXIS 14564, at *8.

²³³ *Boston Taxi Owners Ass'n*, 2015 U.S. Dist. LEXIS 14564, at *2.

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are required to “possess a license known as a ‘taxicab medallion.’”²³⁴ However, these medallions were not required for Uber drivers. The plaintiffs contend that by allowing sharing economy taxi services to operate without the medallions, the city was depriving them of their right to operate exclusively in Boston.²³⁵

Despite the alleged unequal treatment to similar competitors and the alleged violation of an economic right, courts have upheld the attacked regulations under rational basis scrutiny,²³⁶ primarily because of the difference in the way that sharing economy companies and traditional economy companies operate.²³⁷ For example, the court in *Joe Sanfelippo Cabs Inc. v. City of Milwaukee*,²³⁸ facing facts similar to *Boston Taxi*, highlighted the digital communication between the sharing economy company and the customer as one key difference.²³⁹ In particular, the court noted that the digital communication of the sharing economy company provided verifiable interaction of an agreed upon fare prior to the passenger pickup, digitally connected the passenger to the driver,²⁴⁰ and digitally provided a way for the passenger to be able to register a complaint with that company.²⁴¹

Additionally, the *Joe Sanfelippo* court cited Milwaukee’s growing consumer demand for “availab[le] and accessib[le] cost-effective transportation” as a rational basis for upholding the regulation under substantive due process analysis.²⁴² Thus, by demonstrating consumer demand for a service, a state or local government can establish a valid rational basis for creating

²³⁴ *Id.* at *3 (“There are currently 1,825 city-issued medallions.”).

²³⁵ *See id.*

²³⁶ *Joe Sanfelippo Cabs Inc.*, 2014 U.S. Dist. LEXIS 128026; *Boston Taxi Owners Ass’n*, 2015 U.S. Dist. LEXIS 14564.

²³⁷ *Joe Sanfelippo Cabs Inc.*, 2014 U.S. Dist. LEXIS 128026, at *9; *Boston Taxi Owners Ass’n*, 2015 U.S. Dist. LEXIS 14564, at *15.

²³⁸ 2014 U.S. Dist. LEXIS 128026 (E.D. Wis. Sept. 12, 2014).

²³⁹ *Id.* at *9.

²⁴⁰ According to the *Joe Sanfelippo Cabs Inc.* court, this eliminated the need for external visual identification of the transporting vehicle. *Id.* at *11.

²⁴¹ *Id.*

²⁴² *Id.* at *14.

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regulations responding specifically to sharing economy companies under substantive due process analysis.

These courts' reasoning under equal protection and substantive due process analysis is important for three reasons. First, under equal protection analysis, these cases show that courts are open to addressing sharing economy companies as distinct from traditional companies that provide similar services. Courts are doing this by focusing on the method in which the service is rendered instead of the ultimate outcome of the service. This means that although an online peer-to-peer ride sharing company and a traditional taxi service provide the same ultimate outcome (a person receives vehicular transportation to a desired location), the courts consider how that person was able to access that transportation for purposes of equal protection analysis.

Therefore, if a state or local government desires to provide different legislation or regulation for sharing economy companies than for traditional companies, the laws or regulations should focus on the method the company uses instead of the ultimate outcome of the service. By doing so, these governments could provide a valid rational basis for treating sharing economy companies and traditional companies differently.

Next, by recognizing that responding to consumer demand constitutes a rational basis, courts allow municipalities the ability to change the traditional regulatory landscape by demonstrating that there is a consumer demand for a new service. Thus, if a state or local government can show that their citizens have a need for a service that a sharing economy sector provides, simply demonstrating this demand will satisfy rational basis scrutiny under substantive due process analysis. Sharing economy companies that wish to be regulated differently from traditional industries, as well as communities that want to regulate the sharing economy differently, can constitutionally support new regulation by demonstrating consumer demand.

Finally, these cases highlight the interests of some municipalities in finding ways to allow sharing economy

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companies to operate within a new regulatory framework.²⁴³ These municipalities are open to allowing the sharing economy to operate, albeit with some regulation. Additionally, these municipalities view the sharing economy not as an end result (a customer receives a room for a short-term stay), but as a new method of delivering that end result. Because of this evaluation, these municipalities create new legislation and regulation that sets the sharing economy apart from traditional industries.

C. Constitutional Arguments for Little Regulation

While the above cases hint that local and state governments might develop new regulations tailored for the sharing economy, some advocates, many of whom are members of traditional companies affected by the sharing economy,²⁴⁴ support regulating the sharing economy under existing laws and regulations.²⁴⁵ Other advocates argue for little to no regulation for these new companies.²⁴⁶ These de-regulation advocates worry that shoehorning these new companies into existing regulation could limit innovation and cause regulatory capture.²⁴⁷

Although the court decisions based on constitutional analysis discussed above are largely favorable rulings for creating new legislation and regulation for the sharing economy, there may also be equal protection and substantive due process arguments that stand in the way of regulating the sharing economy under already existing regulations.

D. Arguments for Regulation—Finding a Rational Basis

²⁴³ This is instead of: (1) fitting sharing economy companies within an existing framework, (2) fitting them outside of the regulatory framework altogether, or (3) not allowing them to operate at all.

²⁴⁴ Downes, *supra* note 224.

²⁴⁵ Sarah Desmond, *The Laws Apply, Even to Airbnb*, N.Y. TIMES (May 6, 2014), <http://www.nytimes.com/roomfordebate/2014/05/06/regulating-the-sharing-economy/the-laws-apply-even-to-airbnb>.

²⁴⁶ Matthew Feeney, *Level the Playing Field—by Deregulating*, CATO INST. (Feb. 10, 2015), <http://www.cato-unbound.org/2015/02/10/matthew-feeney/level-playing-field-deregulating>.

²⁴⁷ *Id.*

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Traditionally, governments regulate economic activity and, as a result, regulators of economic activity need only to show a rational basis²⁴⁸ for their regulation to satisfy Constitutional equal protection and substantive due process analysis.²⁴⁹ The sharing economy largely involves economic activity. Thus, equal protection and substantive due process analysis of sharing economy regulations focuses on determining if those regulations are rationally related to state interests. However, even with this low standard, it may be difficult to determine a rational basis for regulating the sharing economy under existing regulations designed for traditional industries.

Unfortunately for many traditional industries, “[c]ourts have repeatedly recognized that protecting a discrete interest group from economic competition is not a legitimate governmental purpose.”²⁵⁰ In *Craigmiles v. Giles*,²⁵¹ the Sixth Circuit held unconstitutional “a provision of the Tennessee Funeral Directors and Embalmers Act (“FDEA”) that forbid[] anyone from selling caskets without being licensed by the state as a ‘funeral director.’”²⁵² In order to become a licensed funeral director, a candidate had to undergo two years of mortuary school and pay thousands of dollars—which the court termed “a significant barrier to entering the Tennessee casket market.”²⁵³ The court held that “[n]one of the justifications offered by the state satisfies the slight review required by rational basis

²⁴⁸ “Rational basis review is a test used in some contexts to determine a law's constitutionality. To pass rational basis review, the challenged law must be rationally related to a legitimate government interest. Rational basis is the most lenient form of judicial review, as both strict scrutiny and intermediate scrutiny are considered more stringent. Rational basis review is generally used when in cases where no fundamental rights or suspect classifications are at issue.” *Rational Basis*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/rational_basis (last visited Mar. 17, 2015).

²⁴⁹ *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965).

²⁵⁰ *Craigmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002) (citing *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978), *H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 537-38 (1949); *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411 (1983) as examples).

²⁵¹ *Id.*

²⁵² *Id.* at 222, 229.

²⁵³ *Id.* at 224–25.

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review under the Due Process and Equal Protection clauses of the Fourteenth Amendment.²⁵⁴ In particular, the court found that the licensing requirement did not positively affect the quality of the casket, make the caskets safer, or enhance consumer protection in purchasing caskets.²⁵⁵

When analyzing the regulation of the sharing economy under traditional regulations, a court could find that the licensing requirements may present a significant burden to entering the traditional market, do not positively affect the quality of the good or service, make the good or service safer, or enhance consumer protection. Taking the taxi industry as an example, ride sharing companies are already providing a similar service at a less expensive price.²⁵⁶ Additionally, many cities require that taxis be licensed before they can be operated as such.²⁵⁷ These licenses are often referred to as medallions.²⁵⁸ Many cities also cap the number of medallions allowed.²⁵⁹ In New York City, there are 13,437 taxi medallions that are worth between \$967,000 and \$1,150,000 each in purchase price.²⁶⁰ While in Boston, there are 1,825 medallions²⁶¹ that are worth \$700,000 each.²⁶² And in Chicago, there are 6,904 taxi medallions that are worth \$360,000 each.²⁶³ A court could likely find that the requirement of these licenses presents a

²⁵⁴ *Id.* at 228–29.

²⁵⁵ *Id.*

²⁵⁶ *See supra* notes 218–23 and accompanying text.

²⁵⁷ Emily Badger, *Taxi Medallions Have Been the Best Investment in America for Years. Now Uber May be Changing That.*, WASH. POST (June 24, 2014), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/06/20/taxi-medallions-have-been-the-best-investment-in-america-for-years-now-uber-may-be-changing-that/>.

²⁵⁸ *Id.*

²⁵⁹ *See, e.g., id.* (showing 6,904 medallions in Chicago); *2014 Taxicab Fact Book*, N.Y.C. TAXI & LIMOUSINE COMM'N, 12 (2014) available at http://www.nyc.gov/html/tlc/downloads/pdf/2014_taxicab_fact_book.pdf (showing 13,437 medallions in NYC); *Boston Taxi Owners Ass'n v. City of Boston*, 2015 U.S. Dist. LEXIS 14564, at *3 (D. Mass. Feb. 5, 2015) (showing 1,825 medallions in Boston).

²⁶⁰ *2014 Taxicab Fact Book*, *supra* note 259, at 12.

²⁶¹ *Boston Taxi* at *3.

²⁶² Badger, *supra* note 257.

²⁶³ *Id.*

significant barrier to entering into the taxi market in each of these cities.

Another argument for regulating the sharing economy under the traditional scheme is that existing regulation provides safety for consumers. In 2014, an Uber driver allegedly raped a woman in India.²⁶⁴ Another Uber driver tragically ran into and killed a six-year-old girl while driving in San Francisco.²⁶⁵ At that time, the driver was driving for Uber, but did not have insurance through the company as he did not have a passenger.²⁶⁶ Fox News featured a story titled *10 Incredible Airbnb Horror Stories* that featured provocatively titled incidents including “meth addicts,” “the crime scene,” and “the pop-up brothel.”²⁶⁷ These stories are indeed terrible and facially present a good argument for consumer safety as a valid state interest for regulating the sharing economy under existing regulations.

However, the sharing economy may be just as safe as traditional industries. For instance, a Cato Institute study found that the largely self-regulated ride sharing industry was as safe as the heavily regulated taxi industry.²⁶⁸ The Cato study analyzed a variety of transportation concerns, including the safety for drivers, privacy concerns of passengers, and insurance.²⁶⁹ Importantly, the study also found that “Uber’s and Lyft’s background check requirements are stricter than the screening requirements for many

²⁶⁴ ‘Rapist’ Uber Driver ‘Master of Lies’, *Cops Say*, TIMES INDIA (Dec. 10, 2014, 11:20 PM), <http://timesofindia.indiatimes.com/india/Rapist-Uber-driver-master-of-lies-cops-say/articleshow/45461618.cms>.

²⁶⁵ Melody Gutierrez, *Family of S.F. Girl Killed by Uber Driver Backs Insurance Law*, SFGATE (June 26, 2014, 7:55 AM), <http://www.sfgate.com/news/article/Family-of-SF-girl-killed-by-Uber-driver-backs-5579980.php>.

²⁶⁶ *Id.*

²⁶⁷ George Hobica, *10 Incredible Airbnb Horror Stories*, FOX NEWS (May 8, 2014), <http://www.foxnews.com/travel/2014/05/08/10-incredible-airbnb-horror-stories/>.

²⁶⁸ See generally MATTHEW FEENEY, CATO INSTITUTE, IS RIDESHARING SAFE? (Jan. 27, 2015), available at, [http:// object.cato.org/sites/cato.org/files/pubs/pdf/pa767.pdf](http://object.cato.org/sites/cato.org/files/pubs/pdf/pa767.pdf)

²⁶⁹ Feeney, *Ride Sharing*, *supra* note 61, at 2, 4, 9.

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American taxi drivers.”²⁷⁰ So even though there have been highly publicized instances of unsafe activity in the sharing economy, the sharing economy may be just as safe as traditional industries.

Consumer protection concerns about the ride sharing industry may be mitigated by the digital nature of the companies involved. As the court in *Joe Sanfelippo* noted, because the nature of the ride sharing transaction is digital, the fee for the ride will be agreed upon in advance.²⁷¹ Additionally, the name of ride sharing company and driver information are also known to the passenger before the ride.²⁷² Also, because of the social network and rating information many of these companies employ, the passenger will be able to evaluate his or her driver ahead of time to screen for problem drivers.²⁷³

Although this section does not provide a complete answer to whether the sharing economy may be regulated under traditional regulations, it does serve to indicate that it may be a difficult challenge to shoehorn the sharing economy into traditional regulation.

V. CONCLUSION

The growth of the sharing economy has the potential to shape laws, policy, and business for years to come. Understanding how and when to regulate sharing economy companies is essential to keep consumers, operators, and traditional companies satisfied, innovating, and growing.

²⁷⁰ *Id.* at 6 (finding that Uber and Lyft require their drivers to undergo more rigorous screening than many American taxi drivers. For example, “Uber requires that an applicant driver have none of the following on his or her record over the past seven years: hit and runs, fatal accidents, reckless driving, violent crimes, sexual offenses, gun-related violations, resisting or evading arrest, driving without insurance, or ‘DUI or other drug-related violations or severe infractions[.]’” while, “[t]axi cab driver applicants in Philadelphia cannot have been convicted of a felony in the five years prior to the application.”).

²⁷¹ *Joe Sanfelippo Cabs Inc. v. City of Milwaukee*, 2014 U.S. Dist. LEXIS 128026, at *4 (E.D. Wis. Sept. 12, 2014)

²⁷² *See id.* at *9–10.

²⁷³ *See id.*; *see also supra* Part III.B–D.

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As the legislators in Raleigh make their decisions about how to regulate the sharing economy, they would do well to keep in mind three things. First, leaving the sharing economy unregulated leaves more questions than answers. Second, regulating the sharing economy under existing legislation may not be possible due to equal protection and substantive due process challenges. Third, if the General Assembly does decide to create new legislation and regulation for the sharing economy, it will be important to make sure that legislation specific to the sharing economy focuses on the method of the service delivery rather than the outcome of the service in order to provide a rational basis for treating the sharing economy differently than the traditional economy.