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The Guest Passenger Statute and its Constitutionality in the State of Alabama

by

Grant David Hershbine

An Honors Capstone
submitted in partial fulfillment of the requirements for the Honors Diploma
to

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of
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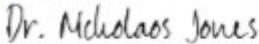
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Dedication

This work is dedicated to my mother, Melissa Hershbine.

Thank you for your caring nature and constant support.

Table of Contents

Introduction/Abstract	5
The Beginning: What is the Guest Passenger Statute and where did it come from?	6
When is the Passenger a “Guest?”	10
Exceptions to the Guest Passenger Statute	11
The Constitutionality of Alabama’s Guest Passenger Statute	14
Conclusion	19

I. Introduction/Abstract

Guest passenger statutes are statutory laws that gained prominence throughout the country in the 1920s and 1930s. The statutes purport to reduce the liability of a driver transporting passengers by creating a higher burden of proof for the guest passenger to prove in order to recover. The proponents of guest passenger statutes claim that these statutes encourage hospitality among drivers and prevent collusive lawsuits against insurers. To date, Alabama is the only state with a still-standing, comprehensive guest statute. Though there are other statutes with guest passenger statutes, they are “far more limited in scope” when compared to Alabama’s.¹ This legal commentary will analyze the complexity of Alabama’s Guest Passenger Statute as well as its constitutionality.

Here is an elementary example of how the Guest Passenger Statute is applied in a personal injury case like a car accident. You are riding as a passenger with a friend who is driving down the road. Your friend rear-ends the back of the vehicle that is directly in front of their vehicle. You are injured due to the collision, and you are taken from the scene to the hospital for treatment of your injuries. Although your friend was negligent by following too closely, failing to maintain a proper lookout, and causing the collision (Ala. Code §32-5A-89), you would not be able to recover against your friend’s insurer if you were a guest passenger. The exceptions to the rule are if some benefit is conferred on the driver (e.g., you paid for their gas) or if you can prove that the driver was willful or wanton in their misconduct while driving (e.g., texting and driving or drinking and driving). Therefore, your friend could be negligent by not paying close attention to the road, hit a motor vehicle, cause you serious personal injury and harm, and still escape liability. The exceptions to

¹ Randall, Susan. *Only in Alabama: A Modest Tort Agenda*, www.law.ua.edu/pubs/lrarticles/Volume%2060/Issue%204/randall.pdf. Accessed 21 Apr. 2024.

this rule that will be discussed in detail later on. This relatively straightforward hypothetical, however, is how the Guest Passenger Statute can bar a injured passenger from bringing a claim for damages against a driver.

The Guest Passenger Statute leaves many questions unanswered. Is it constitutional to bar a plaintiff from recovery? Who is a “guest?” What was the legislature’s intent behind this statute? This legal commentary will analyze each of these questions with the use of legal precedence, statutory law, and historical context. To note, due to the extensive history and breadth of this issue, this commentary will be limited in scope and will, to the extent possible, synthesize information into a concise argument about the Guest Passenger Statute.

II. The Beginning: What is the Guest Passenger Statute and where did it come from?

The Guest Passenger Statute was enacted in 1935 by the Alabama Legislature and states the following:

“the owner, operator, or person responsible for the operation of a motor vehicle **shall not be liable for loss or damage** arising from injuries to or death of a guest while being transported without payment thereof, in or upon said motor vehicle, resulting from the operation thereof, unless such injuries or death are caused by the willful or wanton misconduct of such operator, owner or person responsible for the operation of said motor vehicle” (emphasis added).²

Similar to the application of this rule in the hypothetical discussed in the introduction, the plain text of the statute precludes a passenger from holding a driver liable for damages if the passenger classifies as a guest passenger. Therefore, the duty of care owed by a driver to a guest

² § 32-1-2 *Code of Alabama* (1975).

passenger is much less than a driver to a paying passenger or third party.³

The Guest Passenger Statute was enacted in 1935 by the Alabama Legislature and its primary justification was explained a decade later (1945) in *Blair v. Greene*. In *Blair*, the decedent plaintiff was traveling in a motor vehicle with one of his supervisors who was operating the vehicle. The Supreme Court of Alabama opined the following about the Alabama legislature's intent of passing the Guest Passenger Statute:

“[a]s the use of automobiles became almost universal, many cases arose where generous drivers, having offered rides to guests, later found themselves defendants in cases that often turned upon close questions of negligence. Undoubtedly the legislature in adopting this act reflected a certain natural feeling as to the injustice of such a situation.”⁴

Bart Siniard, a civil lawyer practicing in Huntsville, describes another justification used by proponents as a way to “prevent collusion against insurance companies.”⁵ Siniard argues that the two justifications for the passage of the statute – promoting hospitality of drivers and preventing collusive lawsuits against insurance companies – do not represent the true intent of many proponents of the statute. In fact, Siniard, Professor Prosser, and other legal scholars agree that the statute was passed due to “extensive lobbying by liability insurance companies.” One legal scholar described a similar Canadian guest passenger statute as one of “the most vicious pieces of

³ Detton, David. “The Constitutionality of Automobile Guest Statutes - BYU Law ...” *The Constitutionality of Automobile Guest Statutes: A Roadmap to the Recent Equal Protection Challenges*, digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1005&context=lawreview. Accessed 21 Apr. 2024.

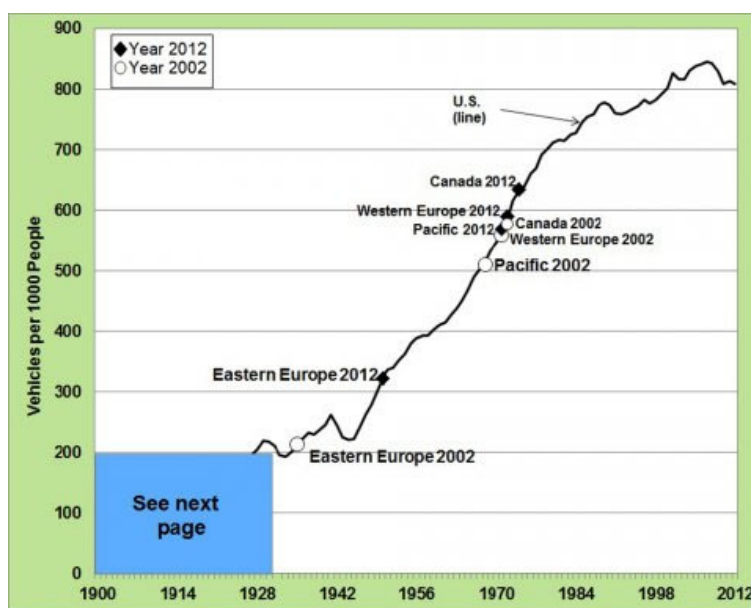
⁴ *Blair v. Greene*, 22 So. 2d 834, 837 (Ala. 1945).

⁵ Siniard, Bart. “Why Alabama’s Guest Passenger Statute Is Unconstitutional.” *LinkedIn*, 15 May 2023, www.linkedin.com/pulse/why-alabamas-guest-passenger-statute-unconstitutional-bart-siniard/.

legislation which an active insurance lobby was able to foist on an unsuspecting public.”⁶

The intent of lobbyists and interested parties in the 1930s was to reduce the liability of insurance companies, not promote the hospitality of drivers or prevent collusive lawsuits. These interests are still prevalent in today’s legal landscape. The recapitulation of these arguments are often retold by tort reform activists across the nation. However, these arguments are often missing a key component. For example, even if that were the true purpose behind supporting the statute, the justifications are archaic.

The following graph illustrates the rise of motor vehicles per thousand people in the United States:



Vehicles per Thousand People: U.S. (Over Time) Compared to Other Countries (in 2002 and 2012)⁷

⁶ Gibson, Dale. “Guest Passenger Discrimination.” *Alberta Law Review*, albertalawreview.com/index.php/ALR/article/view/1949. Accessed 15 Apr. 2024.

⁷ *Vehicles per Thousand People: U.S. (Over Time) Compared to Other Countries (in 2002 and 2012)*. Fact #841: October 6, 2014 *Vehicles per Thousand People: U.S. vs. Other World Regions*, <https://www.energy.gov/eere/vehicles/fact-841-october-6-2014-vehicles-thousand-people-us-vs-other-world-regions>.

Following the solid black line through more than a century of time, the United States went from less than 250 vehicles per 1,000 people at the time of enactment (1935) to over 900 vehicles per 1,000 in recent history (2012). Meaning that, by and large, there is much more access by individuals to a motor vehicle when compared to 1935. With less need for a ride, there is certainly less passenger liability on the part of the insurers and less need for the hospitality of drivers. Of course there will always be a need for drivers, such as in the case of blindness, but the purported intent of the statute was to encourage hospitality. The intended purpose for the statute is no longer relevant in today's society.

The second justification for the statute – preventing collusive lawsuits against insurance companies – is also not convincing. A collusive suit (lawsuit) is defined as a “lawsuit where the parties are not actually in disagreement but are cooperating to steer the courts towards some agreed-upon conclusion” according to Cornell Law School's Legal Information Institute.⁸ In the case of a guest passenger statute, the goal of a legislature may be to eliminate cooperation between a driver and guest passenger to collude against an insurer. Even so, the collusive lawsuit argument does not provide a rationale basis to eliminate a cause of action (specifically negligence claims) from a guest passenger. As Siniard explains, the Guest Passenger Statute and case law create categories for a passenger: one who provides “material benefit” to the driver and one who does not. These classifications that are created by statute “[do] not bear a rational relation to the statute's purpose of preventing collusive lawsuits...” With the two purported benefits/intents of the statute being called into question, the relevance of its use in modern times is questionable.

⁸ “Collusive Suit.” *Legal Information Institute*, Legal Information Institute, www.law.cornell.edu/wex/collusive_suit. Accessed 22 Apr. 2024.

III. When is the Passenger a “Guest?”

The Guest Passenger Statute does not explicitly define who a “guest” is or is not. In *Sullivan v. Davis*, the Alabama Supreme Court opined that:

"The general rule is that if the transportation of a rider confers a benefit only on the person to whom the ride is given, and no benefits other than such as are incidental to hospitality, good will or the like, on the person furnishing the transportation, the rider is a guest; but if his carriage tends to promote the mutual interest of both [the rider] and driver for their common benefit, thus creating a joint business relationship between the motorist and his rider, or if the rider accompanies the driver at the instance of the driver for the purpose of having the rider render a benefit or service to the driver on a trip that is primarily for the attainment of some objective of the driver, the rider is a 'passenger for hire' and not a guest."⁹

The Alabama Supreme Court has also stated that it is not necessary to have paid monetarily to escape the “guest” categorization. In *Hurst v. Sneed*, the Court heard a case where a passenger was hurt while exiting a vehicle at Walmart and created two categories for passengers: “guests” or “passenger[s] for hire.”¹⁰ The *Hurst* Court created a spectrum from which to determine whether the passenger is a guest or passenger for hire. On one side of the spectrum is the hitchhiker. The hitchhiker, as long as some benefit is not provided to the driver, fits squarely into the guest category. On the other side of the spectrum is a passenger who pays the driver. In this case, the passenger is clearly beyond the limits of the statute. The Court also acknowledged that there may not be a definitive line between the two categories. Instead, the Court ruled that factors like the

⁹ *Sullivan v. Davis*, 263 Ala. 685, 688, 83 So. 2d 434, 436-37 (1955)

¹⁰ *Hurst v. Sneed*, 229 So. 3d 215 (Ala. 2017)

arrangements made and the purpose of the trip may be taken into consideration to determine a passenger's category.

When evaluating whether a passenger has a cause of action, an Alabama lawyer has to be aware that not every passenger fits plainly into the "guest" category. If some mutual benefit, such as a business trip or payment is had between the passenger and driver, the passenger is less likely to be considered a "guest." The lawyer must consider which category their potential client falls into, but they must also be aware of the exceptions to the Guest Passenger Statute as described in greater detail in the following section.

IV. Exceptions to the Guest Passenger Statute

a. Willful or Wanton Misconduct

The willful or wanton misconduct exception to the Guest Passenger Statute is stated plainly in the statute. The statute reads that a guest passenger is barred from bringing a claim "unless such injuries or death are caused by the **willful or wanton misconduct** of such operator, owner or person responsible for the operation of said motor vehicle" (emphasis added). This exception may be laid out explicitly in the statute, but it still adds a layer of complexity to the analysis of the Guest Passenger Statute. Perhaps the biggest question becomes this: what is willful or wanton misconduct?

Cornell Law School's Legal Information Institute says that "in the context of tort law, [a] "willful" tort is a tort that is committed in an intentional and conscious way."¹¹ The term willful is a term that is likely to be understood since it is used in everyday language. An example of a willful tort would be a driver who chooses to swerve in and out of their lane intentionally and without

¹¹ "Willful." *Legal Information Institute*, Legal Information Institute, www.law.cornell.edu/wex/willful. Accessed 23 Apr. 2024.

regard to other drivers on the road. If the guest passenger can prove that the misconduct of the driver was willful, then an injured passenger would be able to successfully apply this exception, assuming all other factors are not material to the analysis.

The second component to the exception – wanton misconduct – is more difficult to identify than the first. The reason understanding wanton misconduct is more difficult is two-fold: (1) every state has a different burden for proving wanton misconduct and (2) the line between negligence and wanton misconduct is less obvious. Generally speaking, wanton misconduct “means the conscious and intentional disregard of and indifference to the rights and safety of others, which the defendant knows... is reasonably likely to result in injury...”¹² Alabama courts have often recognized that wanton misconduct is dependent on the facts presented in each case.¹³¹⁴ The line between negligence and wantonness is supposed to be that an act is conscious and intentional, but that requires an illusive understanding of a driver’s intentions.

Theoretically speaking, the line between negligence and wanton misconduct is pretty clear. That is the moment that an action is intentional and disregards the safety of others, the act becomes wanton misconduct. In practice, like most things in law, the true line between negligence and wanton misconduct exists in a grey area. For example, speeding ten (10) miles per hour over the speed limit may be negligent but speeding fifty (50) miles per hour over the speed limit may be wanton misconduct. Both cases involve speeding and being negligent. However, intentionally speeding ten (10) miles per hour is harder to prove than intentionally speeding fifty (50) miles per

¹² *Section 1D-5. Definitions.*,
www.ncleg.gov/enactedlegislation/statutes/pdf/bysection/chapter_1d/gs_1d-5.pdf.
Accessed 23 Apr. 2024.

¹³ *Central Alabama Electric Cooperative v. Tapley*, 546 So. 2d 371 (Ala.1989); *Brown v. Turner*, 497 So. 2d 1119 (Ala.1986); *Trahan v. Cook*, 288 Ala. 704, 265 So. 2d 125 (1972)

¹⁴ *Ex Parte Anderson*. 682 So. 2d 467 (1996).

hour is. This same grey area exists in every case where a driver fails to use reasonable care (the definition of negligence) in their actions, but it is unclear whether a driver's intentions arise to the level of wanton misconduct.

Courts have long held that the analysis of whether a driver's conduct is negligent or wanton misconduct must be done on a case-by-case basis. Despite the flaws of the statute, the willful exception is useful because it places a limit on the driver. The exception allows an injured, no-fault party the ability to bring a cause of action where willful or wanton misconduct can be proved. This exception represents one of the two exceptions that allow a guest passenger to proceed with a claim and not be barred by the statute.

b. Material Benefit

The second exception to Alabama's Guest Passenger Statute is when a passenger provides a driver a material benefit. A material benefit can be a payment by the passenger to the driver, but it does not have to be a monetary benefit. An example of a non-monetary benefit may be an employer picking up their employee for work (see *Hurst v. Sneed*, 229 So. 3d 215 (Ala. 2017)).¹⁵ There is not an exchange of money because of the ride, but there is a material benefit for the driver having his employee at work. Providing a benefit to the driver (e.g., offering to pay for gas) means that the passenger is not within the scope of the Alabama Guest Passenger Statute.

Similar to the willful or wanton misconduct exception, the material benefit exception allows a passenger to be outside of the scope of Alabama's Guest Passenger Statute. If a driver acts willfully, wantonly, or is provided a material benefit, they are unable to escape liability if they

¹⁵ Cunningham Bounds, LLC. "Guest Statute - Hurst v. Sneed." *Cunningham Bounds*, Cunningham Bounds, 5 Apr. 2018, www.cunninghambounds.com/blog/2017/february/guest-statute-hurst-v-sneed/.

injure a passenger of theirs. This leads to the question of whether the classification and exceptions is constitutional.

V. The Constitutionality of Alabama's Guest Passenger Statute

Alabama's Guest Passenger Statute violates the Fourteenth Amendment to the United States Constitution. The Equal Protection Clause of the Fourteenth Amendment is the basis from which many watershed decisions have been made.¹⁶ The Equal Protection Clause reads as follows:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”¹⁷

The clause was created to apply to the states, but courts have ultimately ruled that the underlying “equal protection principles... apply to the federal government as well.”¹⁸ When reviewing an equal protection challenge, the court has developed the following tiered-scrutiny tests as laid out by Justia:

- **Strict scrutiny:** the government must show that its action furthers a compelling government interest and is narrowly tailored to achieve that interest (fundamental rights)

¹⁶ *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023); *Obergefell v. Hodges*, 576 U.S. 644 (2015); and *Bush v. Gore*, 531 U.S. 98 (2000) to name a few.

¹⁷ “14th Amendment to the U.S. Constitution: Civil Rights (1868).” *National Archives and Records Administration*, National Archives and Records Administration, www.archives.gov/milestonedocuments/14thamendment#:~:text=No%20State%20shall%20make%20or,equal%20protection%20of%20the%20laws. Accessed 24 Apr. 2024.

¹⁸ “Equal Protection Supreme Court Cases.” *Justia Law*, supreme.justia.com/cases-by-topic/equal-protection/. Accessed 24 Apr. 2024.

- **Intermediate scrutiny:** the government must show that its action furthers an important government interest by using means that are substantially related to that interest (protected classes)
- **Rational basis review:** the challenger must prove that the government action is not rationally related to a legitimate government interest (all other equal protection claims)

The standard of review depends on the type of case that is brought before the court. For example, strict scrutiny is the burden that must be met if the action is in regard to race, religion, national origin, or some other fundamental right.

Strict scrutiny means the government must prove they have a compelling interest and be narrowly tailored. A recent example of strict scrutiny being the burden of the government was in *Kennedy v. Bremerton School District*.¹⁹ In *Kennedy*, a high school football coach was fired after kneeling and praying at midfield after the football games he coached at. Since the issue at hand was whether his prayer as a government employee violated the Establishment Clause and had to deal with free speech, strict scrutiny was the standard of review. The Court found that the government's interest was not as compelling and narrowly tailored as needed to overcome strict scrutiny. Therefore, the government could not restrict Coach Kennedy's right to free speech by not allowing a prayer at midfield. Strict scrutiny applies when fundamental rights are at question. This is not the burden for Alabama's Guest Passenger Statute since it does not fall into any of the categories requiring strict scrutiny (a fundamental right).

The second type of scrutiny is intermediate scrutiny. The *Craig* Court created this level of scrutiny in 1976 when it heard a case in which a statute discriminated on the basis of gender.²⁰

¹⁹ *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022).

²⁰ *Craig v. Boren*, 429 U.S. 190 (1976). #

Since this decision, gender has been considered a protected class and qualifies for intermediate scrutiny. Other examples of intermediate scrutiny are for some First Amendment actions and discrimination based on illegitimacy. Intermediate scrutiny is a higher burden that the government faces than the rational basis review, but it is a lower burden than strict scrutiny.²¹ Rather than having to prove a compelling and narrowly tailored interest with strict scrutiny, the government must prove that it furthers an important government interest and is substantially related to that interest. Intermediate scrutiny applies when a suspect classification is at issue. Since the Alabama Guest Passenger Statute does not discriminate based on a protected class, the intermediate scrutiny is not required for review.

The third and final standard of review – the rational basis review – is applicable to reviewing Alabama’s Guest Passenger Statute. The rational basis test, like the other two levels of scrutiny, is used to determine whether a statute or ordinance is constitutional. Oftentimes, this test is used when no fundamental rights (strict scrutiny) or suspect classifications (intermediate scrutiny) are involved in the case at hand.²² The rational basis test “ensures that all laws both serve a legitimate governmental purpose and are reasonably related to said purpose.”²³ To prevail on the rational basis test, the challenger must prove (A) the law was not established for a legitimate purpose or (B) that it does not reasonably further that purpose.²⁴ The difficulty of overcoming the

²¹ “Intermediate Scrutiny.” *Legal Information Institute*, Legal Information Institute, www.law.cornell.edu/wex/intermediate_scrutiny. Accessed 24 Apr. 2024.

²² Holoszyc-Pimentel, Raphael. “When Does Rational Basis Bite?” *Reconciling Rational-Basis Review: When Does Rational Basis Bite*, www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-90-6-Note-Holoszyc-Pimentel_1.pdf. Accessed 25 Apr. 2024.

²³ “The Rational Basis Test [No. 86].” *The Federalist Society*, fedsoc.org/commentary/videos/the-rational-basis-test-no-86. Accessed 25 Apr. 2024.

²⁴ Rational Basis Test.” *Legal Information Institute*, Legal Information Institute, www.law.cornell.edu/wex/rational_basis_test#:~:text=The%20rational%20basis%20test%20is,of%20a%20statute%20or%20ordinance. Accessed 25 Apr. 2024.

rational basis review is that the Court does not necessarily consider what the legislature's legitimate purpose *was*; the Court can consider what legitimate purpose it may serve *now*, even if it was unintended. Say the legislature were to pass a law banning TikTok for the purpose of protecting children from influence from the Chinese Communist Party. Even if a rational basis challenge was brought and the Court agreed that the statute did not serve the legitimate purpose it was meant to, the Court could still deny the challenge based on another, unintended legitimate purpose. The Alabama Guest Passenger Statute does was not established for a legitimate state purpose and does not reasonably further that purpose. Under the Equal Protection Clause of the Fourteenth Amendment and with the rational basis test, the Alabama Guest Passenger Statute should be ruled unconstitutional.

The Court in *Zobel v. Williams* stated that “a law will survive that scrutiny if the distinctions rationally further a legitimate state purpose.”²⁵ Meaning that if a state distributes benefits unequally or, in this case, classifies people differently, then the statute must rationally further a legitimate state purpose. As discussed in Section II, the two purported state purposes were to encourage hospitality and prevent collusive lawsuits.

The first purpose, encouraging hospitality, is misplaced. As Susan Randall describes in her law review article *Only in Alabama: A Modest Tort Agenda*, “the idea that drivers will not permit nonpaying guests to ride in their vehicles without the protection of a guest statute is obviously belied by the ordinary experience of drivers and passengers in other states.” Furthermore, the substantial increase in the availability of vehicles has changed the need for hospitality. It is clearly the case that Alabama's Guest Passenger Statute does not serve a legitimate state purpose of encouraging hospitality. Rather, it shields a driver's insurer from having to fairly compensate an

²⁵ *Zobel v. Williams*, 457 U.S. 55, 60 (1982).

injured party due to the negligence of another. Randall also details an “even more problematic” piece of the puzzle: “a guest passenger may recover for property negligently damaged in an automobile accident but not for personal injury or death.”²⁶ The first purported benefit of Alabama’s Guest Passenger Statute does not meet the necessary requirements under the rational basis test.

The second claimed legitimate government interest is to prevent collusive suits. This government interest seems to be more closely related to a legitimate interest than the first on its face. However, the rationales are flawed and, even if it did, the statute does not reasonably further that purpose. For one, as Professor Randall describes, “collusion is a possibility in many types of cases” such as “cases between spouses, which are permitted in Alabama.” Rather than trying to legislate for this purpose, the judicial safeguards against collusive suits (e.g., discovery, motion for summary judgment, common sense juries) should be relied on. Further, there is no proof that the Alabama Guest Passenger Statute truly reduces collusive suits. If a driver and guest passenger were truly trying to collude, all they would have to do to escape the statute is pay or offer to pay the driver. The statute unjustly categorizes and precludes individuals from seeking compensation from a negligent driver. Under the rational basis test, the argument for preventing collusive lawsuits fails by not representing a legitimate interest and for not reasonably furthering said purpose. For these reasons, the Alabama Guest Passenger Statute should be found unconstitutional or, in the alternative, amended/repealed by the legislature.

²⁶ Ala. Code § 32-1-2 (1999) (“The owner, operator or person responsible for the operation of a motor vehicle shall not be liable for loss or damage arising from injuries to or death of a guest while being transported without payment therefore in or upon said motor vehicle”) (emphasis added).

VI. Conclusion

Guest passenger statutes gained prominence in the 1920s and 1930s along with the rise of motor vehicles. They prevent a guest passenger from bringing a cause of action against a driver, unless they qualify under an exception. The Alabama Guest Passenger's purpose was purported to be to encourage hospitality and prevent collusive lawsuits. However, it is evident that the lobbying effort was brought by insurers who wanted to escape liability and stop paying claims. To this day, Alabama is the only state that still has a comprehensive guest passenger statute that has not been repealed or overturned by a state supreme court.

The Alabama Guest Passenger Statute is a representation of the archaic nature of some of Alabama's laws. Almost a century after the passage of Alabama's Guest Passenger Statute, there have been thousands of Alabamians who have been barred from bringing a case against negligent drivers. With the considerations made under the Fourteenth Amendment of the United States Constitution and the rational basis test, it is clear that the Alabama Guest Passenger Statute is unconstitutional and violates equal protection laws. Alabama's Guest Passenger Statute represents one of the many complexities found at the intersection of law, equal protection, and government's public benefit.