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Women-Only Ridesharing in America: Rising Sexual Assault Rates Demand an Exception to Anti-Discrimination Laws

Cover Page Footnote

J.D. Candidate, May 2018, Loyola Law School, Los Angeles; B.A. History, University of California, Santa Barbara, 2012. I would like to thank my parents, my brother Mathew, and my fiancé Daniel for their unrelenting encouragement and love throughout the writing process. I also wish to thank the members of the Loyola of Los Angeles Law Review for all their hard work in the production process. Lastly, a special thanks to Daniella, Michelle, Cindy, and Esther for not only their friendship, but their immense support throughout law school.

WOMEN-ONLY RIDESHARING IN AMERICA: RISING SEXUAL ASSAULT RATES DEMAND AN EXCEPTION TO ANTI-DISCRIMINATION LAWS

*Cristina Medina**

I. INTRODUCTION

On Friday December 5, 2014, following a long day of work, a 26-year-old woman (“Jane Doe”) met a friend for dinner at a restaurant in Guargaon, India.¹ Following dinner, around 11:00 p.m. Jane Doe hailed an Uber to get home.² The ride home was expected to take about forty-five minutes to an hour.³ About half-way to her destination, Jane Doe was viciously and violently raped by her Uber driver.⁴

This incident is far from isolated. Dozens of sexual assaults by drivers for Uber and Lyft have been reported over the past year in the United States alone.⁵ On November 5, 2016, an Uber driver raped an unconscious 17-year-old female passenger near her home in Laguna Beach, California.⁶ In October 2016, an Uber driver in Florida picked up two female passengers and sexually assaulted and raped

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1. Complaint at 7–8, *Doe v. Uber Tech., Inc.*, No. 3:15-cv-00424 (N.D. Cal. Jan. 29, 2015), ECF No. 1.; *India Uber Driver Given Life Term for Delhi Rape*, BBC NEWS (Nov. 3, 2015), <http://www.bbc.com/news/world-asia-india-34707254>.

2. Complaint at 7–8, *Doe v. Uber Tech., Inc.*, No. 3:15-cv-00424 (N.D. Cal. Jan. 29, 2015), ECF No. 1.

3. *Id.*

4. *Id.* at 8–9.

5. ‘Ridesharing’ Incidents, WHO’S DRIVING YOU?, <http://www.whosdrivingyou.org/rideshare-incidents> (last visited Feb. 10, 2017) (The Taxicab, Limousine & Paratransit Association, a non-profit trade association, maintains a website that tracks claims of assault, kidnappings, and other bad acts made against Uber and Lyft drivers.).

6. News Release, Uber Driver Charged with Raping Unconscious Minor Teen in Laguna Beach, Orange Cty. Dist. Att’y’s Off. (Nov. 9, 2016), <http://orangecountyda.org/civica/press/display.asp?layout=2&Entry=4987>.

one of them.⁷ In September 2016, a driver for Uber and Lyft picked up a college student from school in San Diego, California, and drove her to another location where he sexually attacked her in his car.⁸

Uber and Lyft market their services by advertising their commitment to safety and low prices.⁹ Despite their promise of safety—achieved through rigorous background checks of drivers, which includes searches into criminal history and beyond—sexual assault by Uber and Lyft drivers is rampant, both across the United States and overseas.¹⁰

In the United States, three companies have come forward to find a solution. SheRides, SafeHer, and See Jane Go are ridesharing companies that cater their services to women.¹¹ These companies only hire female drivers and provide their transportation services only to women.¹²

The companies have faced mixed emotions from the communities they serve. While some people are grateful that these companies have come forward to help reduce sexual assault in the industry, others are upset and have threatened to sue because of discrimination against men.

Title VII of the Civil Rights Act of 1964¹³ (“Title VII”) prohibits employment discrimination based on sex.¹⁴ As such, ridesharing companies that only employ and provide services to women may seem like a *prima facie* violation of Title VII. However, reducing sexual assault by ridesharing drivers presents a greater

7. Amanda Batchelor, *Uber Driver Accused of Raping Passenger in Miami-Dade County*, LOCAL 10 (Oct. 20, 2016, 10:46 AM), <http://www.local10.com/news/crime/uber-driver-accused-of-raping-passenger-in-miami-dade-county>.

8. *Former Uber, Lyft Driver Charged with Assaulting Passengers*, FOX NEWS (Sept. 22, 2016), <http://www.foxnews.com/us/2016/09/22/former-uber-lyft-driver-charged-with-assaulting-passengers.html>.

9. *See Safe Rides, Safer Cities*, UBER, <https://www.uber.com/safety/> (last visited Jan. 4, 2017) (Uber’s homepage advertises “safe rides for everyone” and has an entire webpage dedicated to advertising Uber safety and the precautions the company takes to keep drivers and passengers safe.); *We Go the Extra Mile for Safety*, LYFT, <https://www.lyft.com/safety> (last visited Jan. 4, 2017) (Similarly, Lyft’s homepage advertises “Serious About Safety” and also has an entire webpage dedicated to advertising its safety precautions.).

10. *See ‘Ridesharing’ Incidents, WHO’S DRIVING YOU?*, <http://www.whosdrivingyou.org/rideshare-incidents> (last visited Feb. 10, 2017).

11. *See About Jane*, SEE JANE GO, <https://www.seejanego.co/#about> (last visited Jan. 4, 2017); *About Us*, SHERIDES, <http://sheridesnyc.com/aboutus.html> (last visited Oct. 17, 2016); SAFEHER, www.gosaf.com (last visited May 18, 2017).

12. *Id.*

13. 42 U.S.C. §§ 2000e–2000e17 (2000).

14. 42 U.S.C. § 2000e-2 (2000).

public policy issue than equal protection in ridesharing. Women-only ridesharing provides a quick and easy solution that has the potential to significantly reduce sexual assault by ridesharing drivers across the United States.¹⁵

This Note explores the public policy in support of women-only ridesharing, and concludes that the policy in support of women's safety outweighs strict adherence to anti-discrimination laws. Section II explores sexual assault in America and across the world by Uber and Lyft drivers. Section III discusses women-only ridesharing, specifically focusing on Uber and Lyft's failed promise to provide a safe ridesharing experience. Section III also discusses three ridesharing companies that have come forward to address the rising sexual assault rates by ridesharing drivers. Section IV describes anti-discrimination law and how it weighs against women-only ridesharing in America. Section V provides a critique of anti-discrimination law in the face of rising sexual assault crimes against women by Uber and Lyft drivers. Section VI proposes that Congress create a narrow exception for women-only ridesharing within the bona fide occupational qualification exception.

Lastly, Section VII provides a brief overview of the reporting rates of rape and sexual assault in the United States. Given the low percentage of sexual assault crimes reported each year, and the alarming sexual assaults already reported by Uber and Lyft drivers against female passengers, this Note concludes that the bona fide occupational qualification exception should be broadened to allow for women-only ridesharing.

II. BACKGROUND

Ridesharing companies in the United States, like Uber and Lyft, provide prearranged transportation services for compensation through their subsidiaries, using online-enabled smartphone applications, like "the Uber App" and "the Lyft App," to connect passengers with drivers. These ridesharing companies provide different levels of service at different prices.

15. See Ronald E. Smith, Charles J. Pine & Mark E. Hawley, *Social Cognitions About Adult Male Victims of Female Sexual Assault*, 24 J. SEX RES. 101-02 (1988) (It is highly unlikely that a female driver would sexually assault a male or female passenger as "reports of men being forced by women to engage in sexual behavior under threat of bodily harm" only "occasionally" appear.).

A customer hails an Uber or a Lyft driver through the Uber App or Lyft App downloaded on the customer's smartphone. The core service provided by these ridesharing companies—passenger transportation for compensation on public roadways—has implications for the safety of customers. Inadequate background checks of drivers, as well as mediocre safety precautions, have led to customer sexual assault and customer assault.¹⁶

A. The Rising Popularity of Ridesharing in the United States

Ridesharing companies like Uber and Lyft are rapidly increasing in popularity for many reasons.¹⁷ First, ridesharing provides riders with an economic alternative to driving themselves, as ridesharing passengers save money on gasoline, parking, and maintenance costs.¹⁸ Ridesharing is also preferable to taking taxis because it is significantly cheaper.¹⁹ Second, ridesharing is appealing because it “helps reduce the number of vehicles on the road, which in turn reduces vehicular air pollution.”²⁰ Despite the potential to reduce vehicular air pollution, some studies have found that Uber and Lyft riders are not “sharing” the Uber or Lyft drive with other riders.²¹ Trip requests are generally one-to-one like other for-hire services.²²

16. See ‘Ridesharing’ Incidents, WHO’S DRIVING YOU?, <http://www.whosdrivingyou.org/rideshare-incidents> (last visited Feb. 10, 2017) (citing multiple cases of assault, such as: Uber driver punching passenger in the face; Uber driver stabbing female passenger; and Uber driver accused of stealing passenger’s iPhone).

17. *UberPOOL San Francisco: Everybody’s In!*, UBER, (Sept. 2, 2014), <https://newsroom.uber.com/us-california/uberpool-san-francisco-everybodys-in> (Uber advertises that ridesharing has “incredible implications for congestion, pollution, urban parking and transportation costs.”).

18. *Ridesharing Benefits*, BROOKHAVEN NAT’L LAB. (May 3, 2012), <https://www.bnl.gov/rideshare/benefits.asp>.

19. Sara Silverstein, *These Animated Charts Tell You Everything About Uber Prices in 21 Cities*, BUS. INSIDER (Oct. 16, 2014, 12:47 PM), <http://www.businessinsider.com/uber-vs-taxi-pricing-by-city-2014-10>. In Los Angeles, California, Uber rates are significantly less than taxi rates. However, this is not always the case in cities outside of Los Angeles. In New York, for example, it may be more economically convenient to ride a taxi than an Uber, if a passenger is riding alone. *Id.*; see *Uber Help*, UBER, <https://help.uber.com/h/5d3fa7d0-9831-4ead-b4f4-0299eb443ea2> (last visited Oct. 21, 2016) (However, ridesharing companies like Uber are now offering services that allow passengers to share a ride and split the cost of the trip, thus making it more economically advantageous to choose Uber over a taxi in cities like New York.).

20. *Ridesharing Benefits*, *supra* note 18.

21. MATTHEW W. DAUS, “EQUITY GAP”: ADVERSE IMPACTS ON PASSENGERS WITH DISABILITIES, UNDERSERVED COMMUNITIES, THE ENVIRONMENT & THE ON-DEMAND WORKFORCE 1, 21, <http://www.whosdrivingyou.org/wp-content/uploads/2016/08/Equity-Report-FINAL-11232642.pdf>.

22. *Id.*

In response, Uber created uberPOOL in yet another attempt to encourage riders to carpool.²³ UberPOOL's low cost serves as an incentive to further encourage carpooling and thus reduce vehicular air pollution.²⁴ Third, ridesharing may help riders save time if they have a long commute, as they may use the carpool lane and thus bypass traffic.²⁵ Lastly, since requesting a ridesharing vehicle has become easy with ridesharing apps like Uber or Lyft, it has become ubiquitous.

1. Uber and Lyft Rise to Success at the Cost of Women's Safety

Uber and Lyft built their empires on the promise of safe and affordable transportation. Specifically, Uber advertises its services to clients by boasting it is the “safest ride on the road,”²⁶ and representing to its customers that:

Every ridesharing and [de]livery driver is thoroughly screened through a rigorous process we've developed using industry-leading standards. This includes a three-step criminal background screening for the U.S.—with county, federal and multi-state checks that go back as far as the law allows—and ongoing reviews of drivers' motor vehicle records throughout their time on Uber.²⁷

Despite promises of “setting the strictest safety standards possible”²⁸ and thoroughly screening its drivers through background checks before approving drivers to work for Uber, sexual assault by Uber drivers is rampant across the United States and overseas.²⁹

In response to the rampancy of sexual assault by rideshare drivers, California launched investigations into Uber and Lyft,

23. See *What is UberPOOL?* UBER, <https://help.uber.com/h/5d3fa7d0-9831-4ead-b4f4-0299eb443ea2> (last visited Mar. 3, 2017).

24. *UberPOOL San Francisco: Everybody's In!* UBER, (Sept. 2, 2014) <https://newsroom.uber.com/us-california/uberpool-san-francisco-everybodys-in> (Uber advertises that uberPOOL will be at least “20% less than standard uberX fares.” In conjunction with its uberPOOL advertising, Uber also lists various facts about the benefits of carpooling, such as reducing traffic by 20% and keeping 1,600 pounds of greenhouse gasses out of the atmosphere each year.).

25. See Daus, *supra* note 21, at 34.

26. First Amended Complaint at 6, *People v. Uber Tech., Inc.*, No. CGC-14-543120 (Cal. Super. Ct. Aug. 18, 2015).

27. *Id.* at 7.

28. *Id.*

29. See ‘Ridesharing’ Incidents, WHO'S DRIVING YOU?, <http://www.whosdrivingyou.org/rideshare-incidents> (last visited Feb. 10, 2017).

claiming that the ridesharing services routinely fail to adequately screen drivers, and have hired drivers with criminal histories.³⁰ Both Lyft and Uber quickly settled with the District Attorney of Los Angeles—Uber settled for \$25 million dollars,³¹ while Lyft agreed to pay \$500,000 in civil penalties.³²

A recent study by the National Bureau of Economic Research suggests that Uber and Lyft drivers regularly harass women.³³ Researchers observed that women were sometimes taken on *significantly* longer rides than men.³⁴ “Other female riders reported ‘chatty’ d[r]ivers who drove extremely long routes, on some occasions, even driving through the same intersection multiple times.”³⁵ As a result, the additional travel that female riders are exposed to appears to be a “combination of profiteering and flirting to a captive audience.”³⁶

As of 2015, Uber had over 400,000 drivers, but only 19% of Uber drivers were women.³⁷ The statistics for female drivers at Lyft

30. First Amended Complaint, *supra* note 26. Uber and Lyft have both settled with the Los Angeles District Attorney. Uber settled for up to \$25 million. News Release, L.A. Cty. Dist. Att’y Jackie Lacey, Los Angeles and San Francisco County District Attorneys Reach \$25 Million Settlement with Uber (Apr. 7, 2016), http://da.co.la.ca.us/sites/default/files/press/040716_Los_Angeles_and_San_Francisco_County_District_Attorneys.pdf.

31. News Release, L.A. Cty. Dist. Att’y Jackie Lacey, Los Angeles and San Francisco County District Attorneys Reach \$25 Million Settlement with Uber (Apr. 7, 2016), http://da.co.la.ca.us/sites/default/files/press/040716_Los_Angeles_and_San_Francisco_County_District_Attorneys.pdf.

32. Stipulated Judgement and Permanent Injunction at 6, *People v. Lyft, Inc.*, No. CGC-14-543113 (Cal. Super. Ct. Dec. 9, 2014).

33. YANBO GEE, CHRISTOPHER R. KNITTEL, DON MACKENZIE & STEPHEN ZOEPEF, RACIAL AND GENDER DISCRIMINATION IN TRANSPARATION NETWORK COMPANIES 18 (Oct. 2016), http://faculty.washington.edu/dwhm/wp-content/uploads/2016/10/TNC_Main_NBER.pdf

34. *Id.*

35. *Id.*

36. *Id.* Uber has recently introduced “upfront fares” that provide riders with a predetermined price for their Uber ride. Upfront fares provide a false sense of security to Uber customers. Upfront fares are calculated using the expected time and distance of the trip and local traffic. Despite this, upfront fares are still subject to change if the Uber driver takes an alternative longer route, for example, as the rider is charged extra for every additional mile and every additional minute. *Upfront Fares: No Math and No Surprises*, UBER (June 23, 2016), <https://newsroom.uber.com/upfront-fares-no-math-and-no-surprises>. As such, Uber’s new upfront fares have not shown any decrease in sexual assault by Uber drivers, possibly because the drivers are not losing time or fuel in their pursuit of female riders. See ‘Ridesharing’ Incidents, WHO’S DRIVING YOU?, <http://www.whosdrivingyou.org/rideshare-incidents> (last visited Feb. 10, 2017) (sexual assault rates remain steady since the release of Uber’s upfront rates in June 2016).

37. *New Survey: Drivers Choose Uber for its Flexibility and Convenience*, UBER (Dec. 7, 2015), <https://newsroom.uber.com/driver-partner-survey>.

are only slightly higher.³⁸ Notably, even though there has been an increase in female drivers, they work fewer hours than their male counterparts.³⁹ Studies by Uber and third-parties have not explained why there are significantly lower rates of female drivers than male drivers.⁴⁰ One is left to wonder if sexual assaults by ridesharing drivers are deterring women from working as drivers for fear of sexual assault by male passengers.

2. The Success of SheRides in New York

Stella Mateo launched SheRides in 2014 in New York in response to the severe underrepresentation of women in the taxi industry.⁴¹ SheRides's website highlights the goals of the women-only ridesharing service as women's safety and empowerment.⁴² SheRides provides women ridesharing services by connecting female passengers with female drivers.⁴³

SheRides's terms and conditions agreement states that SheRides "is open to everyone, [and is] happy to connect male passengers with cars to get them where they need to go."⁴⁴ The terms go on to state that SheRides is "tailored as a 'women-for-women' car service that connects female passengers who seek transportation to certain destinations . . . with female drivers operating vehicles."⁴⁵ However, "[i]f a Rider seeks a female driver, a female passenger must be present and accompanying any male passengers."⁴⁶

38. *How Many Women Drive for Uber Versus Lyft Exclusively?*, SHERPASHARE (Dec. 8, 2015), <https://www.sherpashare.com/share/how-many-women-drive-for-uber-versus-lyft-exclusively> (30% of Lyft-only drivers are female).

39. *Id.*

40. *See id.*

41. *Stella Mateo, Founder and CEO of SheTaxis/SheRides*, SHERIDES, <http://sheridesnyc.com/stellabio.html> (last visited Mar. 13, 2017).

42. *See About Us*, SHERIDES, <http://sheridesnyc.com/aboutus.html> (last visited Oct. 17, 2016).

43. *Id.*

44. *Terms and Conditions*, SHERIDES, <http://shetaxis.com/terms-and-conditions> (last visited Oct. 17, 2016).

45. *Id.*

46. *Id.*

3. The Launch of SafeHer Nationwide⁴⁷

SafeHer, a new ridesharing service, will launch nationwide in 2017 with a mission to provide women drivers and passengers a safe ridesharing experience.⁴⁸ SafeHer will only hire female drivers and only drive female passengers.⁴⁹ SafeHer drivers are only permitted to pick up female passengers, including transwomen of any age, and boys under thirteen years of age.⁵⁰

4. See Jane Go in California

Similar to SheRides and Safeher, See Jane Go offers a women-driving-women alternative to other ridesharing companies.⁵¹ See Jane Go, which recently launched in Orange County and Long Beach, California, allows female passengers to have a male passenger ride along as long as the female passenger accompanies the male passenger at all times.⁵²

B. Women-Only Ridesharing Outside of the United States

Gender segregation on public and private transportation is prominent outside of the United States, with at least nine other countries providing women-only transportation.⁵³ The launch of women-only buses, trains, and taxis are fueled by a common purpose: to stop sexual assault on women.⁵⁴

47. *All Female Ride-Sharing App is Launching Nationwide After Overwhelming Demand*, OBSERVER (Apr. 20, 2016 12:13 PM), <http://observer.com/2016/04/all-female-ride-sharing-app-is-launching-nationwide-after-overwhelming-demand>.

48. SAFEHER, www.gosafir.com (last visited May 18, 2017) (“Safr is redefining ridesharing for women. Built and powered by women, Safr’s goal is to provide safe transportation and job opportunities for women everywhere.”).

49. *Id.* (“Safr is a mission-driven ridesharing company built for and powered by women.”).

50. Laura Galligan, *SafeHer: A Ride Sharing Service for Women, by Women*, BC HEIGHTS (Apr. 20, 2016), <http://bcheights.com/metro/2016/safeher-a-ride-sharing-service-for-women-by-women> (citing to comments by Michael Pelletz, the founder of SafeHer).

51. *About Jane*, SEE JANE GO, <https://seejanego.co/#about> (last visited July 22, 2017).

52. *About Jane*, SEE JANE GO, <https://seejanego.co/#about> (last visited July 22, 2017).

53. *These Countries Tried Women-only Transport. Here’s What Happened*, TELEGRAPH (Aug. 26, 2015 12:16 PM) <http://www.telegraph.co.uk/women/womens-life/11824962/Women-only-trains-and-transport-How-they-work-around-the-world.html> (Brazil, Japan, Mexico, Indonesia, Egypt, India, Thailand, Iran, and the United Kingdom are a few of the countries with women-only transportation services.).

54. *See, e.g., Joy of India’s Women-Only Trains*, BBC NEWS (Oct. 10, 2009), http://news.bbc.co.uk/2/hi/south_asia/8290377.stm (“[M]en often harass women on other trains,” “touch and pinch” women, make “lewd comments,” and tease women); Colin Joyce, *Persistent Groppers Force Japan to Introduce Women-Only Carriages*, TELEGRAPH (May 15, 2005, 12:01 AM), <http://www.telegraph.co.uk/news/worldnews/asia/japan/1490059/Persistent-groppers-force->

In 2014, a thirteen-year-old girl was raped and killed on a train in Thailand.⁵⁵ The brutal rape caused public outrage, and prompted the introduction of women-only carriages on trains.⁵⁶

Beginning in 2004, Mexico and Japan introduced female-only metro carriages as a way to stop sexual harassment.⁵⁷ In Mexico City, a few metro cars are reserved for women and children only, while the rest of the trains are mixed.⁵⁸ The female-only carriages sparked “Pink Taxis,” a government backed taxi service for women, with female drivers.⁵⁹

The Mexican government backed the service to provide women a “safe and comfortable service . . . without becoming an object for sexual harassment, or a flirtatious comment on behalf of a normal taxi driver.”⁶⁰

Starting in 2006, Iran, Brazil, Egypt, and India introduced women-only trains and women-only buses, driven by women.⁶¹ In Japan, metro carriages are reserved for women during morning rush hour.⁶² The female-only carriages were welcomed by women and men. Some women welcomed the female-only carriages because of

Japan-to-introduce-women-only-carriages.html; Kocha Olarn and Hillary Whiteman, *Thailand Horrified After 13-Year-Old Raped, Thrown From Train*, CNN (July 9, 2014, 11:36 PM), <http://www.cnn.com/2014/07/09/world/asia/thailand-teen-train-rape>.

55. Kocha Olarn and Hillary Whiteman, *Thailand Horrified After 13-Year-Old Raped, Thrown From Train*, CNN (July 9, 2014, 11:36 PM), <http://www.cnn.com/2014/07/09/world/asia/thailand-teen-train-rape>.

56. *Thailand Launches Women-Only Train Cars After Girl, 13, Raped and Murdered*, THOMSON REUTERS FOUND. (Aug. 1, 2014, 4:08 PM), <http://news.trust.org/item/20140801160819-50s83/?source=search>.

57. Colin Joyce, *Persistent Gropers Force Japan to Introduce Women-Only Carriages*, TELEGRAPH (May 15, 2005, 12:01 AM), <http://www.telegraph.co.uk/news/worldnews/asia/japan/1490059/Persistent-gropers-force-Japan-to-introduce-women-only-carriages.html>; *Women-Only Taxis Introduced in Mexico City*, RNW MEDIA, <https://www.rnw.org/archive/women-only-taxis-introduced-mexico-city> (last visited Sept. 29, 2016).

58. *Women-Only Taxis Introduced in Mexico City*, RNW MEDIA, <https://www.rnw.org/archive/women-only-taxis-introduced-mexico-city> (last visited Sept. 29, 2016) (“Carriages on the city’s metro system have already been set aside specifically for women and children.”).

59. *Id.*

60. *Pink Taxis For Women in Mexico City*, NEWS18.COM (Oct. 27, 2009, 3:29 PM), <http://www.news18.com/news/india/pink-taxis-from-reuters-327457.html>.

61. *Cairo’s Women-Only Metro Carriages Reveal Egypt Tensions*, BBC NEWS (Mar. 12, 2015), <http://www.bbc.com/news/world-middle-east-31773567>; *Iran to Launch Women-Only Buses*, IRAN FOCUS (Apr. 10, 2006), http://www.iranfocus.com/en/index.php?option=com_content&view=article&id=6680:iran-to-launch-women-only-buses&catid=6&Itemid=111.

62. Colin Joyce, *Persistent Gropers Force Japan to Introduce Women-Only Carriages*, TELEGRAPH (May 15, 2005, 12:01 AM), <http://www.telegraph.co.uk/news/worldnews/asia/japan/1490059/Persistent-gropers-force-Japan-to-introduce-women-only-carriages.html>.

the increasing frequency of groping incidents,⁶³ while some men welcomed the female-only carriages because of the fear of being falsely accused of sexually assaulting a woman.⁶⁴

C. Legal Challenges Facing Women-Only Ridesharing Companies

A female-only policy could make SheRides, SafeHer, and See Jane Go targets of gender discrimination lawsuits—suits that may be difficult to win for companies that openly advertise their services as “female-only.”⁶⁵ Specifically, these companies are susceptible to suits for violation of Title VII,⁶⁶ given their commitment to employing and serving predominantly women. Furthermore, these companies may face tort claims in which men allege intentional infliction of emotional distress because of the discrimination they experienced.

This potential liability begs the questions—will Title VII preclude companies like SafeHer, SheTaxis, and See Jane Go from offering female-only services? And if not, will compliance with Title VII preempt tort liability?⁶⁷ The answer to the second question is unclear, but at least one Justice has suggested that perhaps it will not, like how “[c]ompliance with OSHA standards, for example, has been held not to be a defense to state tort or criminal liability.”⁶⁸

Moreover, in his concurring opinion in *Johnson Controls, Inc.*, Justice White suggests that a policy that discriminates based on sex falls within the bona fide occupational qualification exception if the “employer could show that exclusion of [men] from certain jobs was reasonably necessary to avoid substantial tort liability.”⁶⁹

63. *Id.*

64. *Id.*

65. *See About Jane*, SEE JANE GO, <https://www.seejanego.co/#about> (last visited Jan. 4, 2017); *About Us*, SHERIDES, <http://sheridesnyc.com/aboutus.html> (last visited Oct. 17, 2016); SAFEHER, www.gosafr.com (last visited May 18, 2017).

66. *See, e.g.*, Andrew Gray, *SafeHer, But Not for Him: Title VII Discrimination in Ridesharing*, 28 STAN. L. & POL’Y REV. ONLINE 13 (2017) (concluding that SafeHer violates Title VII, and that no exception exists or should exist).

67. *Int’l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187 (1991) (White, J., concurring); *see also*, *English v. Gen. Elec. Co.*, 496 U.S. 72 (1990) (A state law action for intentional infliction of emotional distress was not pre-empted by the Energy Reorganization Act of 1974.).

68. *Johnson Controls, Inc.*, 499 U.S. at 213–14 (White, J., concurring).

69. *Id.* at 212.

A primary concern for most businesses, like the ridesharing business, is the safety of their customers and their workers.⁷⁰ Avoiding safety risks to third parties is inherently part of both an employee's ability to perform a job and an employer's "normal operation" of its business.⁷¹ Protecting female passengers while providing them a service is as much a legitimate concern for ridesharing companies as the safety of third parties is for companies whose business is guarding prisons⁷² or flying airplanes.⁷³

III. STATEMENT OF EXISTING LAW

A. Gender and Employment Discrimination is Prohibited by Law

The United States is founded on the principle that "all men are created equal."⁷⁴ The Declaration of Independence is a powerful reflection of the desire to create a society based on equality and fairness. The reality is that the United States Constitution was written by males for the protection of males. The Framers of the Constitution did not intend to protect the rights of women.⁷⁵ Even decades after the passage of the Fourteenth Amendment, which provides that no state shall deny to any person the equal protection of the laws,⁷⁶ women were still fighting for legal equality and protection.

Women did not gain the right to vote until 1920.⁷⁷ Women could not own credit cards under their own name until 1974.⁷⁸ Until 1978,

70. *Id.* at n.5.

71. *Id.* at 216–17 (White, J., concurring).

72. *Dothard v. Rawlinson*, 433 U.S. 321 (1977).

73. *See Johnson Controls, Inc.*, 499 U.S. at 217 (1991) (White, J., concurring) (Protecting fetal safety while carrying out job duties is as much a legitimate concern as is safety to third parties in guarding prisons or flying planes.); *Western Air Lines, Inc. v. Criswell*, 472 U.S. 400 (1985).

74. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

75. Abigail Adams attempted to include the interests of women in the founding of the country when she wrote to John Adams requesting that he "remember the ladies." He replied: "We know better than to repeal our masculine systems." *See* Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 YALE L.J. 1281 (1991) (citing Adams Family Correspondence) (L. Butterfield ed. 1963, original manuscript dated 1776); *see also* Ruth Bader Ginsberg, *Sex Equality and the Constitution*, 52 TUL. L. REV. 451, 452 (1978) (explaining that even the drafters of the Fourteenth Amendment never intended to include women within its scope).

76. U.S. CONST. amend. XIV.

77. U.S. CONST. amend. XIX.

78. *5 Things Women Couldn't Do in the 1960s*, CNN (Aug. 25 2014 3:32 PM) <http://www.cnn.com/2014/08/07/living/sixties-women-5-things>; *See* 15 U.S.C. § 1691 (2012).

women could still be fired from their workplace for being pregnant.⁷⁹ And, although Title VII prohibits employers from discriminating against employees on the basis of sex, it was not until 1993 that the Supreme Court ruled that sexual harassment in the workplace was illegal.⁸⁰

Title VII of the Civil Rights Act of 1964⁸¹ prohibits employment discrimination based on race, color, religion, sex or national origin.⁸² Specifically, Title VII makes it unlawful for an employer “to fail or refuse to hire” an individual because of sex.⁸³

B. Exceptions to Gender and Employment Discrimination

Advertising by an employer indicating a “prohibited preference, limitation, specification, or discrimination” is prohibited under Title VII.⁸⁴ However, the statute provides an exception: an employer may discriminate based on sex if the discrimination is justified by a “bona fide occupational qualification for employment.”⁸⁵

The bona fide occupational qualification exception is an “extremely narrow exception to the general prohibition of discrimination on the basis of sex.”⁸⁶ An employer or customer’s mere preference for an individual of a particular religion, sex, or national origin is not sufficient to establish a bona fide occupational qualification.⁸⁷ Exceptions that qualify include prison guards and employees of places where there is constant or near-constant close intimate contact with only women.⁸⁸

79. EEOC Compliance Manual, Section 626.1: Pregnancy Discrimination Act, 2006 WL 4672822 (June 1, 2006).

80. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 22 (1993).

81. 42 U.S.C. §§ 2000e–2000e17 (2000).

82. 42 U.S.C. § 2000e-2 (2000).

83. *Id.*

84. 42 U.S.C. § 2000e-3(b).

85. *Id.*

86. *Dothard v. Rawlinson*, 433 U.S. 321, 341 (1977) (citation omitted).

87. *See, e.g., EEOC v. Kamehameha Schools/Bishop Estate*, 990 F.2d 458, 466–67 (9th Cir. 1993). There, the plaintiff brought action on behalf of a non-Protestant school teacher against a Protestant school alleging that the school teacher was discriminated against because she was not Protestant. *Id.* The Ninth Circuit held that adherence to Protestant faith was not a bona fide occupational qualification for teaching at Protestant schools. *Id.*

88. *See, e.g., Rawlinson*, 433 U.S. at 334–37. In *Rawlinson*, the United States Supreme Court held that Title VII permits gender discrimination against women in an all-male maximum security prison pursuant to the bona fide occupational qualification exception, because twenty percent of prisoners were convicted sex offenders. The Court justified its reasoning by finding that female prison guards were more vulnerable to male sexual attack than male prison guards. *Id.*

To qualify as a bona fide occupational qualification for employment, an employer must prove: (1) a direct relationship between the protected trait and the ability to perform the duties of the job⁸⁹ and (2) that the bona fide occupational qualification relates to the “essence” or “central mission of the employer’s business.”⁹⁰

There is a narrow safety exception *within* the bona fide occupational qualification defense to sex discrimination: “[t]he safety exception is limited to instances in which sex or pregnancy actually interferes with the employee’s ability to perform the job.”⁹¹

The safety exception within the bona fide occupational qualification is so narrow that even when women’s reproductive safety was put at issue, the Court held that it did not qualify as an exception.⁹² To qualify for the safety exception, the employer must show a “factual basis for believing that all or substantially all women would be unable to perform safely and efficiently the duties of the job involved.”⁹³

In *International Union v. Johnson Controls, Inc.*, an employer had a policy of barring all women, except those whose infertility was medically documented, from jobs involving actual or potential lead exposure exceeding the Occupational Safety and Health Administration’s (“OSHA”) standard.⁹⁴ The Supreme Court declined to expand the exception to allow fetal-protection policies that mandate particular standards for pregnant or fertile women.⁹⁵ The Court concluded that “[u]nless pregnant employees differed from others ‘in their ability or inability to work’ they must be ‘treated the same’ as other employees ‘for all employment-related purposes’ In other words, women as capable of doing their job as their male counterparts may not be forced to choose between having a child and having a job.”⁹⁶ Further, it was well documented at the time that lead exposure affected men’s fertility as well, yet the employer only

89. See *Int’l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 193, 201 (1991) (“By modifying ‘qualification’ with ‘occupational,’ Congress narrowed the term to qualifications that affect an employee’s ability to do the job.”).

90. *Johnson Controls, Inc.*, 499 U.S. at 215–16.

91. *Id.* at 204.

92. *Id.*

93. *Id.* at 207 (quoting *Weeks v. Southern Bell Tel. & Co.*, 408 F.2d 228, 235 (1969)).

94. *Id.* at 190–92.

95. *Id.* at 204.

96. *Johnson Controls, Inc.*, 499 U.S. at 204.

discriminated against women.⁹⁷ The Court held that the employer's policy was facially discriminatory, and the employer had failed to establish that sex was a bona fide occupational qualification.⁹⁸

Despite the holding in *Johnson Controls, Inc.*, courts *do* consider safety in determining if a discriminatory employment practice falls within the bona fide occupational qualification exception, even if it is just to a small degree. In *Western Air Lines, Inc. v. Criswell*,⁹⁹ the Supreme Court endorsed a two-part inquiry for evaluating a bona fide occupational qualification defense.¹⁰⁰

First, the job qualification must not be “so peripheral to the central mission of the employer’s business’ that *no . . .* discrimination could be ‘reasonably necessary to the normal operation of the particular business.’”¹⁰¹ “This inquiry ‘*adjusts to the safety factor*’ by ensuring that the employer’s restrictive job qualifications are ‘reasonably necessary’ to further the overriding interest in public safety.”¹⁰² The inquiry also takes into account an employer’s interest in safety: “[w]hen an employer establishes that a job qualification has been carefully formulated to respond to documented concerns for public safety, it will not be overly burdensome to persuade a trier of fact that the qualification is ‘reasonably necessary’ to a safe operation of the business.”¹⁰³

Second, the employer must show it “had reasonable cause to believe, that is, a factual basis for believing, that all or substantially all [persons excluded] would be unable to perform safely and efficiently the duties of the job involved” *or* that it is “highly impractical” to deal with them on an individual basis.¹⁰⁴

In analyzing safety concerns that may fall within the bona fide occupational qualification exception, some courts have suggested that the analysis goes beyond asking if there is a “substantial risk” to women.¹⁰⁵ Justice White suggested that merely finding that there is a

97. *See id.* at 192–93.

98. *Id.* at 198, 206.

99. 472 U.S. 400 (1985).

100. *Id.* at 413–14, 416–17.

101. *Id.* at 413.

102. *Id.* (emphasis added).

103. *Id.* at 419.

104. *Id.* at 414.

105. *See, e.g.*, Int’l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW v. Johnson Controls, Inc., 499 U.S. 187, 220 (1991) (White, J., concurring).

high risk that *some* injury may occur to women is not sufficient.¹⁰⁶ Courts must look at the *extent* of the injury that is likely to occur.¹⁰⁷ For example, in his concurring opinion in *Johnson Controls, Inc.*, Justice White suggested that if a sex discrimination “policy insists on a risk-avoidance level substantially higher than other risk levels tolerated” by the employer, such as risks to employees and customers, the “policy should not constitute a [bona fide occupational qualification].”¹⁰⁸ For example, if alternatives to excluding women, such as warnings combined with another factor or test, would sufficiently minimize the risk to women such that it would be comparable to other risks tolerated by the employer, then the policy would not constitute a bona fide occupational qualification.¹⁰⁹

IV. CRITIQUE OF EXISTING LAW

While scholars could argue that Title VII came into being for the protection of women, the fact remains that since its enactment, reports of sexual assault have increased.¹¹⁰ In light of increasing reports of sexual assaults,¹¹¹ it could be argued that these same doctrines that supposedly came into existence to protect women are now depriving them of the ability to run a private transportation service that would significantly reduce sexual assault.

A. Women-only Ridesharing Companies Do Not Qualify For the Bona Fide Occupational Qualification Exception

At first blush, it may seem that the bona fide occupational qualification exception allows for women-only ridesharing, as an argument can be made for society’s documented need for such a service. But this societal need is not sufficient to meet all of the requirements of the bona fide occupational qualification exception.

A prerequisite to qualify for the bona fide occupational qualification exception is that the discriminatory employment

106. *Id.*

107. *Id.*

108. *Id.* at 220–21.

109. *Id.* at 221 n.10.

110. MICHAEL PLANTY & LYNN LANGTON, FEMALE VICTIMS OF SEXUAL VIOLENCE, 1994–2010 7 (Mar. 2013), <https://www.bjs.gov/content/pub/pdf/fvsv9410.pdf>.

111. *Id.*

practice at issue is not justified by a customer's mere "preference."¹¹² Although it is likely that some female customers of SheRides, SafeHer, and See Jane Go will choose female-only ridesharing because they have been victims of sexual assault, other passengers are not sexual assault victims. The latter customers, however, may choose female-only ridesharing as a precautionary measure given the alarming rates of sexual assaults by Uber and Lyft drivers.¹¹³ It is likely that these women want to avoid any anxiety they may feel from just the thought of being a sexual assault victim. Thus, both categories of female passengers, assault victims and non-assault victims, arguably have a *need* for female-only ridesharing.

Even if the demand for female drivers is considered a customer preference, sex discrimination in female-only ridesharing may still be justified under the bona fide occupational qualification exception¹¹⁴ if it passes a two-part test: (1) that there be a direct relationship between the protected trait and the ability to perform the duties of the job;¹¹⁵ and (2) that the bona fide occupational qualification relates to the "essence" or "central mission of the employer's business."¹¹⁶ Furthermore, Justice White's concurring opinion in *Johnson Controls, Inc.* outlines a third requirement: that there is no less-restrictive or reasonable alternative.¹¹⁷

Further inquiry shows that women-only ridesharing slightly misses the bar to qualify as a bona fide occupational qualification exception. The primary goal, or "essence" of women-only ridesharing is to provide a safe mode of transportation for women. Providing female drivers for female passengers helps accomplish this goal, and is reasonably necessary for the success of the business. Some argue that the "essence" of ridesharing in general is to provide

112. See *EEOC v. Kamehameha Schools/Bishop Estate*, 990 F.2d 458, 466–67 (9th Cir. 1993) (holding that a "personal preference is not a BFOQ").

113. '*Ridesharing' Incidents, WHO'S DRIVING YOU?*, <http://www.whosdrivingyou.org/rideshare-incidents> (last visited Feb. 10, 2017).

114. *Diaz v. Pan Am. World Airways, Inc.*, 442 F.2d 385, 389 (5th Cir. 1971) ("customer preference may be taken into account only when it is based on the company's inability to perform the primary function or service it offers").

115. See *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 201 (1991) ("By modifying 'qualification' with 'occupational,' Congress narrowed the term to qualifications that affect an employee's ability to do the job.").

116. *Id.* at 203.

117. *Id.* at 221 n. 10 (White, J., concurring).

transportation, and nothing else;¹¹⁸ and that only hiring female drivers—or discriminating against male drivers—is unlawful, as the discriminatory practice is not reasonably necessary for the success of a transportation service.

One critic argues that in order to satisfy the “essence of business” test, women-only ridesharing companies would “need to show that hiring male drivers would completely undermine this objective, by proving that women are more capable of the mechanical duties of a driver.”¹¹⁹ Analyzing women-only ridesharing through this lens makes it nearly impossible for a women-only service to satisfy the “essence of business test,” as it is nearly impossible to demonstrate that either sex is the superior driver.

B. Women-only Ridesharing Fails the All-or-Substantially-All Test

Women-only ridesharing also fails the “all-or-substantially-all test.” Under this test, sex discrimination is acceptable only when the employer shows a factual basis for believing that either “all or substantially all” men would be “unable to perform safely and efficiently the duties of the job involved,” “or that it is highly impractical to deal with them on an individual basis.”¹²⁰ Since only some men resort to sexually assaulting women, substantially all men can work as a driver without assaulting their passengers. In other words, there is no way for a female passenger, or even a ridesharing company, to know in advance whether a driver might commit an assault. Even after vetting drivers, sexual assaults have occurred. For this reason, women often fear riding with a male driver and feel more comfortable with a female driver.

It could be argued that substantially all men cannot perform the job that female drivers in women-only ridesharing companies can perform, the duties of which extend beyond the scope of safe transportation. Arguably, women-only ridesharing companies only hire female drivers because the companies are also providing the passenger with female drivers to eliminate the anxiety that can be caused by male drivers, as part of their transportation service.

118. See, e.g., Gray, *supra* note 66 at 17 (“Like any other ridesharing app, the essence of SafeHer’s business is to safely and efficiently transport passengers from one place to another.”).

119. *Id.*

120. *Johnson Controls, Inc.*, 499 U.S. at 207, 216.

C. There is No Less-Restrictive Alternative to Women-only Ridesharing.

Lastly, there is no less-restrictive or reasonable alternative to women-only ridesharing. As a practical matter, a possible alternative to using ridesharing is taking public transit. Like using Uber or Lyft, taking public transit leaves women susceptible to sexual harassment.¹²¹ Another possible alternative to ridesharing is simply to have women drive their own car. Again, this may not be possible for women that do not own or have access to a car. Further, some people use ridesharing to get home after a night out drinking with friends. Ridesharing, in theory, is supposed to provide an alternative and safer means to get home. As a practical matter, society wants to encourage use of ridesharing apps or any alternative means of transportation in order to deter drunk driving.

V. AN EXCEPTION SHOULD BE CREATED FOR WOMEN-ONLY RIDESHARING COMPANIES WITHIN THE BONA FIDE OCCUPATIONAL QUALIFICATION EXCEPTION

Critics have proposed alternatives to women-only ridesharing in order to avoid making a legal exception for them. One alternative that critics have suggested is hiring both men and women, and then giving passengers the ability to choose the sex of the driver.¹²² But such a feature is essentially already available to Uber and Lyft passengers. Even if women-only ridesharing companies changed their policy so as to always provide passengers with the option of at least one female driver, male passengers would still have the option to choose the female driver. This would raise the issue of female drivers potentially falling victim to sexual harassment by male passengers.

Another alternative is to install partitions between driver and passenger, which may reduce the likelihood of violent crime.¹²³

121. See, e.g., *Joy of India's Women-Only Trains*, BBC NEWS (Oct. 10, 2009), http://news.bbc.co.uk/2/hi/south_asia/8290377.stm (In India and Japan, men often harass women on trains by making lewd comments or touching them.); Colin Joyce, *Persistent Gropers Force Japan to Introduce Women-Only Carriages*, TELEGRAPH (May 15, 2005, 12:01 AM), <http://www.telegraph.co.uk/news/worldnews/asia/japan/1490059/Persistent-gropers-force-Japan-to-introduce-women-only-carriages.html>.

122. See Gray, *supra* note 66 at 19.

123. *Id.*

Although this has proven to have some success in taxi services,¹²⁴ installation of partitions is impractical for ridesharing businesses, where each driver uses his or her own personal vehicle. Installing a partition would place an undue burden on drivers, as they would have to install and remove the barrier for each shift.¹²⁵ What makes ridesharing companies like Uber and Lyft so appealing to employees is that drivers can work whenever they want, or whenever they have spare time.¹²⁶ Taking the time and labor to install and uninstall these barriers is time consuming, impractical, and unlikely to significantly reduce sexual assault.

Still, another proposal could be that if both the pick-up and the drop-off locations are known before the passenger hails a ride, ridesharing companies should equip their apps so that the apps alert or call the police if a ridesharing car diverts from the route or stops for too long. But sexual assault can occur within minutes, if not seconds. By the time the app alerted officials, the female passenger may have already been sexually assaulted.

Currently, Uber and Lyft have a GPS on their drivers at all times during their shift, tracking driver's whereabouts. If having a GPS tracker tracking drivers at all times during the Uber or Lyft ride is not enough of a deterring factor for male drivers who sexually assault their passengers, there is likely nothing more that can be done.

Lastly, another proposal is to have cameras installed in cars whereby the interaction between the driver and rider is not only monitored in real-time by Uber or Lyft, but also taped. This is a promising proposal, but seems unrealistic. On New Year's Eve 2016 alone, Uber provided around 15 million rides.¹²⁷ The average estimated time of arrival for a ride was just four minutes.¹²⁸ It is

124. See *id.* (citing John R. Stone and Daniel C. Stevens, *The Effectiveness of Taxi Partitions: The Baltimore Case*, SE. TRANSP. CTR. (June 1999), <http://www.taxilibrary.org/stone99.pdf>).

125. As of February 2017, it appears that there are no removable partitions available for purchase. As such, if a driver elected to use partitions, the driver would need to have the barrier professionally installed. Professional installation of partitions would not only be expensive, but it would be a permanent installation.

126. Claire, *Why I Drive: Meet Charles, a Brooklyn-based Hip Hop Artist*, UBER (June 27, 2016), <https://newsroom.uber.com/why-i-drive-meet-charles-a-brooklyn-based-hip-hop-artist> (providing driver with a flexible schedule); *Become a Driver*, LYFT, <https://www.lyft.com/drive-with-lyft> (last visited Feb. 10, 2017) (drivers can choose when they want to drive).

127. Kaitlin, *Ringin' in 2017 with Uber*, UBER (Jan. 2, 2017) <https://newsroom.uber.com/nye2016>.

128. *Id.*

impractical, if not impossible, for Uber to hire hundreds of thousands of new employees to monitor the real-time feed of driver and passenger interactions.

The solution to sexual assault by male drivers in ridesharing is for Congress to establish a narrow exception to Title VII's ban on sex-based discrimination to accommodate for women-only ridesharing. The policy in support of women's safety outweighs strict adherence to anti-discrimination laws because it provides an easy and simple solution to sexual assault by male ridesharing drivers on female passengers. Further, the proposed narrow exception would not impede competing ridesharing companies like Uber and Lyft, as they could continue providing their services to both male and female passengers.

VI. CONCLUSION

Since the commencement of this Note in early-November 2016, nineteen other sexual assaults by Uber and Lyft drivers have been reported in the United States alone.¹²⁹ Studies have shown that only 36% of all rapes and sexual assaults against women in the United States are reported.¹³⁰ This means that 64% of sexual assaults are not reported to the police.¹³¹ Following these statistics, it is highly probable that the number is closer to fifty-three women who were victims of sexual assault by their Uber and Lyft drivers from November 2016 through May 2017.

The current legal standards of the bona fide occupational qualification exception do not allow for gender-discrimination by women-only ridesharing companies. As such, SafeHer, SheRides, and See Jane Go's hiring and consumer-selection practices will likely not hold up against legal challenges.

Critics who argue that Title VII prevents such companies from discriminating against men also forget that the law once prevented women from owning their own land, voting, and owning their own

129. From November 5, 2016 through May 18, 2017, WHO'S DRIVING YOU? reported that women from Ohio, Texas, Pennsylvania, and California were victims of sexual assault or kidnapping by their Lyft or Uber driver. 'Ridesharing' Incidents, WHO'S DRIVING YOU?, <http://www.whosdrivingyou.org/rideshare-incidents> (last visited Feb. 10, 2017).

130. MICHAEL PLANTY & LYNN LANGTON, FEMALE VICTIMS OF SEXUAL VIOLENCE, 1994-2010 7 (Mar. 2013), <https://www.bjs.gov/content/pub/pdf/fvsv9410.pdf>.

131. *Id.*

credit card, and did not protect them against being fired because they were pregnant.

The law is malleable, constantly evolving. It is an instrument to “‘change the distribution of power,’ which requires not equal treatment but ‘asymmetrical approach that adopts the perspective of the less powerful group with the specific goal of equitable power sharing among diverse groups.’”¹³²

Now that Uber and Lyft have created an additional gateway to sexual assault on women, our society is faced with the issue of women’s safety yet again. To stop innovative companies like SafeHer, SheRides, and See Jane Go, which have been specifically created in hopes of reducing sexual assault, would not only stifle innovation, but also perpetuate the crime. To stop these companies is to have all of the necessary tools to quickly and safely stop a crime, yet decide to quietly stand on the sidelines and watch it occur.

Providing a narrow exception to Title VII to allow for women-only ridesharing companies is the first step towards reducing sexual assault on our female friends, sisters, mothers, and daughters.

132. MICHAEL WEISS & CATHY YOUNG, CATO INST. POL’Y ANALYSIS NO. 256: FEMINIST JURISPRUDENCE: EQUAL RIGHTS OR NEO-PATERNALISM? (June 19, 1996) (quoting Martha Chamallas, *Feminist Constructions of Objectivity: Multiple Perspectives in Sexual and Racial Harassment Litigation*, TEX. J. WOMEN & L. 1 (1992)).

