

Saferide debate overlooks big question: Is it legal?



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Here it comes again, the annual "Does Saferide discriminate against men?" debate. The answer, of course, is yes. Saferide engages in systematic and purposeful discrimination in providing both service and employment to women. The issue is whether Saferide's discrimination is justifiable, and if so, is it legal?

The ASUO Constitution Court ruled in 1992 that Saferide discriminated against men, but that it was justifiable. The court applied a poorly constructed cost-benefit analysis and determined that the benefit of giving women a sense of safety on campus at night was worth the cost of violating the ASUO Constitution.

The ASUO Constitution states, in part, that "access to activities supported in whole or in part through mandatory student incidental fees shall not be denied for reasons of sex ...". The court ruled that Saferide violated this section of the constitution.

However, the court then decided that if Saferide were to accept men, either as passengers or drivers, or if IFC funding were to be eliminated to conform with the anti-discrimination provision of the constitution, women would be

effectively excluded from participating in IFC-funded extracurricular activities that occur in the evening, and that would be an even greater injustice.

On its face, the decision makes some sense. Many women do feel unsafe being out and about at night and generally with good reason. This is, in simple terms, a bad world right now.

It is so bad, in fact, that many men are equally justified in feeling unsafe. The court found as much but said men could just call the Office of Public Safety for an escort. But so can women, so even without Saferide, women continue to have access to safe transport at least equal to men's access.

One of the more fundamental flaws in the court's reasoning is that it was predicated on the inaccurate presumption that Saferide provides transportation solely between women's homes and campus. Saferide also runs as a taxi service for women who want to go to town, dropping them off and picking them up from shopping trips to Valley River Center, movie theaters, etc.

Saferide would have a stronger argument if, in fact, it were devoted solely to ensuring women's access to campus from home — but it isn't. More so it is simply providing redundant service already provided by Lane Transit District and local cab companies.

In decisions both prior and subsequent to the Saferide decision, the Constitution Court forbade the spending of student fees on the United States Stu-

dent Association because the USSA constitution prohibited the hiring as its chairman a caucasian, heterosexual male who was not a veteran or disabled. The court ruled that provision violated the same section of the ASUO Constitution that Saferide was, and is still, violating.

Even if the Constitution Court decision regarding Saferide remains unchanged, there are also questions of whether Saferide violates various state anti-discrimination laws.

Oregon employment anti-discrimination laws are meant to "encourage the fullest utilization of available manpower by removing arbitrary standards of ... sex ...". They declare that "the opportunity to obtain employment without discrimination because of sex ... is recognized as and declared to be a civil right."

In Oregon, it is unlawful for an employer, "because of an individual's ... sex ... to refuse to hire or employ ... such individual." Saferide certainly violates this portion of Oregon law. However, there is an exception that, because of Saferide's nature, it may fall into. It reads: "Discrimination is not an unlawful employment practice if such discrimination results from a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business."

Saferide's only hope of exempting itself from this law is to claim that being a woman is a "bona fide occupational requirement" to be a Saferide driver. Typically, this language would be used to exclude

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women from certain jobs that they may not be physically capable of performing, such as heavy lifting (though even that is a dubious claim nowadays).

Arguably, if men were allowed to drive for Saferide, some women would stop riding and the "normal operation" of Saferide would be adversely affected. However, there is an at least equally persuasive argument that Saferide's business is transporting people from place to place, and the ability to do that job has nothing to do with a person's gender.

Not allowing men to drive is one thing. Not allowing them to ride is yet another. It is possible that Saferide violates Oregon's public accommodations law, which forbids denying access to the "full and equal accommodations, advantages, facilities and privileges of any place of public accommodation" based on sex.

Whether Saferide is a "place of public accommodation" is unclear. The law defines it as "any ... service offering to the public accommodations, advantages, facilities or privileges, whether in the nature of ... service ... or otherwise." The law specifically exempts places that are "distinctly private."

Is Saferide public or private? On the one hand, the general

public does not have access to Saferide's services — only fee-paying University students may use it. On the other hand, it is funded by the state system of higher education through the collection of mandatory student incidental fees. And even if Saferide is private, it still discriminates against its fee-paying student base.

Yet another law prohibits discrimination by University programs (which Saferide is) that are funded in whole or in part by money appropriated by the Legislature, even if the program is "fair in form but discriminatory in operation." It is not too much of a stretch to say that the Legislature has delegated the appropriation of student incidental fees to the state board of higher education, which collects and disperses pursuant to statutory authority, on behalf of the Legislature.

Such an interpretation would bring incidental fees under the umbrella of legislative appropriations and thus subject ASUO programs to that particular anti-discrimination law.

Does Saferide discriminate? Unquestionably. Is it justifiable? Perhaps. Is it legal? We'll have to wait and see.

Martin Fisher is a columnist for the Emerald.

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