Transportation Network Companies and Accessibility Under the ADA & Other Pathways to Transportation Equity

HELEN C. WUELLNER, BENJAMIN BAEK, PRASHANTH S. VENKATARAM, AND MOLLIE C. D'AGOSTINO * †

* Declaration below.

† The authors would like to thank the UC Davis Chancellor's Postdoctoral Fellowship for supporting Prashanth Venkataram's work at the UC Davis Policy Institute for Energy, Environment, and the Economy, thus making his collaboration and input on this article possible.

Declaration

The writing of this article was supported by the UC Davis Policy Institute for Energy, Environment, and the Economy. The authors of this article were brought together through their shared interests in technology, transportation, and disability rights issues and their positions at the Institute.

Helen Wuellner, the article's primary author, contributed to this article in her role as Legal Fellow at the Institute. Helen is currently a law student at UC Davis School of Law, set to graduate in May 2024. She entered law school committed to pursuing a public interest career focused on equity and social justice, and over time she has become increasingly passionate about environmental law, specifically environmental justice and the impacts of environmental issues on individuals and communities. Her interest in transportation policy as it relates both to equity concerns and environmental law led her to get involved with the Policy Institute and the writing of this article. Helen holds a B.A. in Language Studies with a French emphasis from UC Santa Cruz.

Benjamin Baek, the article's second author, also contributed to this article as a Legal Fellow at the Institute. Benjamin is also a law student at UC Davis School of Law, set to graduate in May 2023. Benjamin now hopes to pursue a legal career in intellectual property law and patent litigation, but he holds long-time interests in the interfaces between science, technology, and the law which he explored at the Policy Institute and within this article. Benjamin holds a B.A. in Public Health from UC Berkeley.

Prashanth Venkataram, our third author, contributed to this article with valued expertise as a Post-Doctoral Researcher for the Policy Institute as well as for the 3 Revolutions Future Mobility Program within the UC Davis Institute for Transportation Studies. Prashanth's research interests primarily focus on understanding the state of current and future transportation systems for people with disabilities; what policies may lead to beneficial outcomes for such passengers; and the intersection of broader questions about socioeconomic equity, sustainability, and land use in the context of transportation. Prashanth holds a B.S. in physics from the Massachusetts Institute of Technology, and an M.A. and PhD in electrical engineering from Princeton University.

Mollie C. D'Agostino, our senior author, contributed to and oversaw the development of this article in her role as Policy Director at the Institute. She also serves as Policy Lead for emerging technology, public transit, and shared mobility within the UC Institute of Transportation Studies, and is a founding Co-Director of the Mobility Science, Automation and Inclusion Center (MoSAIC) within the UC Davis Institute of

Transportation Studies. Mollie holds a B.A. in Political Science and the Program for the Environment from the University of Michigan, Ann Arbor and an M.P.P. from the Goldman School of Public Policy at UC Berkeley. Her work spans environmental policy, community development, and transportation planning; and her previous publications tackled automated vehicle policy, mobility data, equitable congestion pricing, and transit payment innovations.

This article originally came out of a conversation between Benjamin Baek, Mollie C. D'Agostino, and Prashanth Venkataram about the state of accessibility for individuals with disabilities in the Transportation Network Company sphere. As Legal Fellow, Benjamin considered the implications of the lack of accessibility under relevant law, namely the Americans with Disabilities Act. California then passed Prop. 22 (classifying TNC drivers as independent contractors rather than employees), which prompted Mollie to request that Benjamin draft a skeleton of this article with her contributions. Once Benjamin's fellowship concluded, the project was passed along to Helen, who built upon Benjamin and Mollie's skeleton, continued their research, and expanded the article to its current form. Mollie continued to guide the direction of the article throughout the drafting process, and Prashanth's extensive knowledge in the field was invaluable to its accurate portrayal of the full scope of the issue, beyond the lens of the law alone.

TABLE OF CONTENTS

INTRODUCTION 208
I. THE LEGAL ISSUES 211
A. STANDING 211
B. LIABILITY PURSUANT TO THE ADA....................212
C. AVAILABLE REMEDIES 214
1. *INDEP. LIVING RES. CTR. V. LYFT*: THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA INSTITUTES A NEW RULE BARRING INJUNCTIVE RELIEF WHEN THE RELIEF CONSTITUTES A "PERFORMANCE STANDARD" 215
2. *CRAWFORD V. UBER TECHS.*: PROVIDING WAV SERVICE AND DISSOLVING DISCRIMINATORY POLICIES ARE NOT UNREASONABLE MODIFICATIONS AS A MATTER OF LAW 217
a. PROVISION OF WAV SERVICE IS NOT A PRECLUDED REMEDY, NOR A PER SE UNREASONABLE MODIFICATION UNDER 42 U.S.C. § 12184(B)(2) 217
b. TNC POLICIES NEED NOT BE EXPLICITLY DISCRIMINATORY FOR POLICY CHANGE TO BE A REASONABLE REMEDY....................219
3. THE COURT DELICATELY DISTINGUISHES *CRAWFORD* FROM *LYFT*, FINDING THAT PLAINTIFFS' REQUESTED REMEDY IS A CONCRETE, THOUGH UNREASONABLE, MODIFICATION 221
a. THE COURT FINDS *CRAWFORD* PLAINTIFFS' PROPOSED MODIFICATION UNREASONABLE, THOUGH IT OPINES THAT THIS DOES NOT PRECLUDE SUCCESS FOR FUTURE PLAINTIFFS....................223
II. POLICY PATHWAYS 227
A. ESTABLISH ADA LIABILITY FOR TNCS 227
B. INCENTIVIZE TNC PARTNERSHIPS WITH PUBLIC TRANSIT AGENCIES....................228
C. STATE LAW 230
CONCLUSION....................232

Introduction

As of 2020, 26% of the United States adult population — more than 61 million adults — lived with a disability.[1] Disability affects many aspects of day-to-day-life, but access to transportation continues to be a critical

[1] *Disability Impacts All of Us,* CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html (last visited Feb. 25, 2023).

issue for individuals with disabilities.[2] To ensure this large portion of the country's population would not face discrimination based on their disability — including in accessing transportation — the U.S. Congress passed the Americans with Disabilities Act ("ADA") into law in July 1990.[3] The ADA is comprised of five titles, pertaining to (I) employment, (II) public entities, (III) private entities offering public accommodations, (IV) telecommunications, and (V) miscellaneous provisions, respectively.[4] The ADA prohibits discrimination against individuals with disabilities in all public venues and provides them civil rights and protections similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion.[5]

Protections afforded by the ADA are intended to reach the day-to-day experiences of individuals with disabilities, primarily by attempting to provide them with equal access to public spaces and transportation. The road to actualization of these intentions has been rocky in many regards, with protections frequently being ignored, eroded, or challenged. Access to transportation is one such neglected area of the ADA that has recently caught the attention of the courts, as the growth of Transportation Network Companies (TNCs), like Uber and Lyft, have raised the question of the scope of ADA Title III protections.

One might optimistically wager that user-friendly TNC apps would expand accessible transport for people with disabilities. This has been true in some cases, as individuals with certain disabilities, such as blindness, have reported increased mobility independence with the advent of TNCs.[6] However, many people with disabilities have not received greater access, particularly those who use motorized wheelchairs.[7] Plaintiffs across the country who require wheelchair accessible services have filed suit against Uber and Lyft or their drivers for alleged violations of the ADA. One plaintiff with disabilities, Dorene Giacopini, who is suing Lyft for unequal access to their transportation services, stated that the company's lack of wheelchair accessibility hearkened her back to "'the bad old days', when

---

[2] KESSLER FOUND. & NAT'L ORG. ON DISABILITY, THE ADA, 20 YEARS LATER 15, 115 (2010), https://www.nod.org/wp-content/uploads/07c_2010_survey_of_americans_with_disabilities_gaps_full_report-2.pdf.

[3] *Americans with Disabilities Act of 1990*, Pub. L. No. 101-336, 104 Stat. 238 (codified as amended at 42 U.S.C. §§ 12101-12213) (hereinafter "ADA").

[4] *What is the American Disabilities Act (ADA)?*, ADA NAT'L NETWORK, https://adata.org/learn-about-ada (last visited Feb. 27, 2023).

[5] *Id.*

[6] S.F. MUN. TRANSIT AUTH., *TNCS AND DISABLED ACCESS* 2 (2019).

[7] *Id.*

people with disabilities were confined to their bedrooms by their families."[8] Giacopini goes on to explain that there is an "exhaustion that I think our community feels with having to deal with the inaccessible environment . . . [a]nd the frustration that after having worked so hard and won such great success with the Americans with Disabilities Act, that these companies have come along and caused us to lose some of the independence we had gained."[9]

Plaintiffs like Giacopini have brought claims against TNCs under provisions of Title III, which governs private entities serving the public. This Title is codified in 42 U.S.C. §§ 12182, 12184, which (1) prohibit private entities that own or operate public accommodations from discriminating based on disability, and (2) prohibit disability discrimination in public transportation services provided by private entities.[10]

This article analyzes the legal landscape surrounding actions brought against TNCs under Title III of the ADA; the issues plaintiffs face in establishing standing, liability, and reasonable modifications; and the real-world effects of the law as applied. It pays particular attention to two recent cases out of the federal District Court for the Northern District of California: one which establishes a new rule narrowing the scope of acceptable proposals for relief, and another which expands upon and grapples with that rule. Then, the article examines several policy solutions to increasing the accessibility of these services, including paratransit partnerships and state law alternatives. The article concludes by arguing that a combination of approaches is necessary to truly improve equity in the expanding on-demand transportation and ride-hailing sector, as the ADA may simply not be expansive enough to do so on its own.

---

[8] Joe Fitzgerald Rodriguez, *'Lyft's Got to Look Into Its Own Soul': Judge Weighs Requiring Lyft to Provide Wheelchair Users Equal Service*, KQED (June 9, 2021), https://www.kqed.org/news/11876977/lyfts-got-to-look-into-its-soul-judge-weighs-requiring-lyft-to-provide-wheelchair-users-equal-service.

[9] *Id.*

[10] 42 U.S.C. § 12182 ("No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."); *id.* § 12184 ("No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people whose operations affect commerce.").

I. The Legal Issues

A. Standing

The first barrier plaintiffs litigating against TNCs under the ADA have faced is establishing standing — the legal right to bring a claim in federal court.[11] To establish standing, a plaintiff must show they have (1) suffered a concrete and particularized injury, that is (2) fairly traceable to a defendant's allegedly unlawful conduct, and that is (3) likely to be redressed by the requested relief.[12]

TNCs have defended themselves in lawsuits accusing them of disability discrimination by arguing that plaintiffs cannot bring suit unless they have used the app and experienced discrimination themselves.[13] Otherwise, TNCs have contended, plaintiffs would not have suffered an actual concrete injury redressable in court, as per the standing requirement. Several federal district and appellate courts have rejected this argument. In 2020, the Ninth Circuit confirmed that the language of the ADA permits plaintiffs to bring suit even if the discrimination is only anticipatory, to take place in the future.[14] Further, the court explicitly stated that plaintiff's knowledge that a TNC does not offer Wheelchair Accessible Vehicle ("WAV") service in the plaintiff's area satisfies the notice requirement.[15] This mirrors *Ramos v. Uber Technologies*, in which a district court in Texas similarly interpreted the ADA to find standing.[16] These courts clearly established in their respective jurisdictions that plaintiffs need not

[11] *See* Lujan v. Def. of Wildlife, 504 U.S. 555, 560–61 (1992) (holding that plaintiffs lacked standing as they did not demonstrate an imminent, concrete injury).

[12] *See id. See also* 42 U.S.C. § 12188(a)(1) (authorizing lawsuits by "any person who is being subjected to discrimination on the basis of disability . . . or who has reasonable grounds for believing that [they are] about to be subjected to discrimination"); *id.* (plaintiff need not make a "futile gesture" to demonstrate injury as long as the individual has actual notice that the defendant does not intend to comply with these provisions); Doran v. 7-Eleven, Inc., 524 F.3d 1034, 1039 (9th Cir. 2008) ("The Supreme Court has instructed [courts] to take a broad view of constitutional standing in civil rights cases, especially where, as under the ADA, private enforcement suits 'are the primary method of obtaining compliance with the Act.'").

[13] *See, e.g.*, Namisnak v. Uber Techs., Inc., 444 F. Supp. 3d 1136, 1140 (N.D. Cal. 2020) (holding "plaintiffs were not required to engage in 'futile gesture' . . . to sufficiently allege past and present discrimination").

[14] *See id.* at 1140–41 ("The Ninth Circuit has explicitly rejected the requirement that ADA plaintiffs 'personally encounter' barriers in order to sue.").

[15] *Id.*

[16] Ramos v. Uber Techs., Inc., No. SA-14-CA-502-XR, 2015 WL 758087, at *7 (W.D. Tex. Feb. 20, 2015) ("[A]n ADA plaintiff need not request services as long as they have actual notice that they would be denied services or treated in a discriminatory manner and they are being deterred from attempting to obtain the services by such knowledge.").

pointlessly attempt to request a ride in a market where there is no WAV service available on the TNC's app as a prerequisite to establishing an injury for standing. Both decisions constitute persuasive authority which other courts may consider and follow if they choose. Several courts have already followed suit, including the federal District Court for the Western District of Pennsylvania in *O'Hanlon v. Uber Technologies, Inc.*,[17] as well as the federal District Court for the Northern District of California in two recent cases: *Crawford v. Uber Technologies, Inc.*[18] and *Independent Living Resource Center San Francisco v. Lyft, Inc.*[19]

B. Liability Pursuant to the ADA

Once ADA plaintiffs have overcome the initial hurdle of standing, they subsequently face the challenge of convincing courts that a defendant TNC is subject to Title III liability. Pursuant to §§ 12182 and 12184, TNC defendants must be either a "place of public accommodation" or a private entity that is "primarily engaged in the business of transporting people" in order to face liability under Title III of the ADA.[20] Plaintiffs have brought claims under both theories and have confronted TNCs contending that neither apply to them.

At present, there is a significant circuit split on the issue of whether businesses in the virtual space (e.g. websites) are considered "public accommodations" capable of discrimination under § 12182.[21] The Eleventh Circuit recently weighed in on the debate, holding that websites are not physical spaces and are therefore not liable for Title III discrimination.[22] Using this logic, TNCs insist that the virtual app space in which they operate makes them primarily technology companies rather than transportation companies. Consequently, TNCs argue they should not be liable under § 12184.[23] Rather, they suggest the primary function of their business is not providing rides, but instead providing an app-based platform through which

---

[17] O'Hanlon v. Uber Techs., Inc., No. 2:19-CV-00675, 2021 WL 2415073 (W.D. Pa. June 14, 2021).

[18] Crawford v. Uber Techs., Inc., 616 F. Supp. 3d 1001 (N.D. Cal. 2022).

[19] *See* Indep. Living Res. Ctr. S.F. v. Lyft, No. C19-01438, 2021 U.S. Dist. LEXIS 166229, (N.D. Cal. Sept. 1, 2021) (holding "plaintiffs have not carried their burden to prove that Lyft discriminated against disabled individuals in violation of the ADA").

[20] 42 U.S.C. §§ 12182–12184.

[21] Alison Frankel, *11th Circuit's Winn-Dixie Ruling Deepens Confusion on ADA and Digital Access*, REUTERS (Apr. 8, 2021), https://www.reuters.com/article/us-otc-ada/11th-circuits-winn-dixie-ruling-deepens-confusion-on-ada-and-digital-access-idUSKBN2BV2UU.

[22] *Id.*

[23] Bryan Casey, *Uber's Dilemma: How the ADA May End the On-Demand Economy*, 12 U. MASS. L. REV. 128, 130–31 (2017).

drivers and riders can connect.[24] They further emphasize this notion by noting that they do not own the cars used by their drivers and that their drivers function entirely as independent contractors, not employees.[25] This combination of arguments creates a legal landscape which potentially recasts the ADA as entirely inapplicable to TNCs.

These arguments are not always compelling. In fact, the District Court for the Northern District of California recently resolved two summary judgment motions in favor of imposing liability on Uber and Lyft as transportation companies under § 12184.[26] In one motion, the court explained its basis for finding liability:

> Even taking the facts in the light most favorable to [Defendant], it is clear that Uber (1) requires drivers to comply with state and local laws, (2) maintains behavioral expectations and enforces its community standards against drivers, (3) selects the cities in which it operates and which products are available, (4) connects potential drivers to rental car agencies, (5) oversees personnel deployed to airports and other large events to help riders, and (6) sets, without input from drivers, the prices of rides. That it does not regulate exactly when and where rides take place does not undermine the general conclusion that it asserts extensive control over drivers and the transportation system it operates.[27]

Disability rights advocates counter TNCs' arguments by asserting that a TNC's business extends beyond the simple provision of an app-based platform to include the ride itself.[28] For example, Uber clearly maintains an app that facilitates the requesting of rides, but the company also regulates driver and vehicle eligibility by deciding which drivers and cars it will permit to operate on its platform.[29] Advocates further argue, from a policy perspective, that the only way to ensure equitable access in ridesharing is to hold TNCs liable under the ADA in the same way as traditional private

---

[24] Rachel Reed, *Disability Rights in the Age Of Uber: Applying the Americans With Disabilities Act Of 1990 To Transportation Network Companies*, 33 GA. ST. U. L. REV. 517, 520 (2017).
[25] *Id.*
[26] Crawford v. Uber Techs., Inc., No. 17CV02664, 2021 U.S. Dist. LEXIS 161969, at *18-19 (N.D. Cal. Aug. 26, 2021); Indep. Living Res. Ctr. S.F. v. Lyft, Inc., No. C1901438, 2021 U.S. Dist. LEXIS 166229, at *24 (N.D. Cal. Sept. 21, 2021).
[27] *Crawford*, 2021 U.S. Dist. LEXIS 161969, at *18–19.
[28] *See* Carmen Carballo, *Tap a Button, Get Denied: Uber's Noncompliance with the ADA*, 104 MINN. L. REV. (Apr. 24, 2020).
[29] *See* Reed, *supra* note 24, at 532.

transportation services.[30] Consider taxi companies: they are subject to anti-discrimination regulations imposed by the Department of Transportation ("DOT"), which are nearly identical to the requirements of the ADA.[31] This means that taxi companies must comply with the DOT's rules on eligibility, removal of barriers to access, and provision of reasonable accommodations and auxiliary services in order to satisfy the ADA.[32] Due to their unique app-based business model with private drivers, TNCs have not yet been required to comply with the DOT's regulations, and accordingly have not been held to the ADA's standards.

In sum, TNCs' insistence that they should not be subject to liability under the ADA due to their unique model as an app-based transportation service has been met with substantial opposition. While some courts have seen validity in TNCs' arguments, others have found the perspective of plaintiffs and disability advocates more persuasive, and have responded by imposing liability onto TNCs based on the idea that a TNC's business extends beyond its electronic platform to the rides themselves. Nonetheless, disability advocates demand that more must be done to even-handedly apply public policy to TNCs and bring an end to the unacceptable exemption of TNCs from policies like the DOT's taxi regulations.

C. Available Remedies

If a plaintiff can successfully establish both standing and applicability of the ADA to a TNC, they must then request a reasonable modification.[33] Once the request is made, the defendant must rectify any discriminatory policies, practices, or procedures by implementing those reasonable modifications requested by the plaintiff.[34] If the defendant fails to make the plaintiff's requested reasonable modifications, the plaintiff may bring a discrimination claim under the ADA for enforcement of the modification.[35] However, what constitutes "reasonable modifications" has become a central legal issue in ADA claims against TNCs. This issue is at the core of two recent cases from the District Court for the Northern District of California.

---

[30] Carballo, *supra* note 28.
[31] *See* 49 C.F.R. § 37.5(f) (2023).
[32] *See id.*
[33] Crawford v. Uber Techs., Inc., 616 F. Supp. 3d 1001, 1007 (N.D. Cal. 2022); *see* Fortyune v. Am. Multi-Cinema, Inc., 364 F.3d 1075, 1082 (9th Cir. 2004).
[34] 28 C.F.R. § 36.501(b) (2023).
[35] *See Fortyune,* 364 F.3d 1075, at 1082.

1. *Indep. Living Res. Ctr. v. Lyft*: The District Court for the Northern District of California Institutes a New Rule Barring Injunctive Relief When the Relief Constitutes a "Performance Standard"

In *Independent Living Resource Center San Francisco v. Lyft*, Plaintiffs were four individuals who use motorized wheelchairs and two non-profit organizations representing Bay Area resident wheelchair users.[36] Plaintiffs alleged that Lyft was in violation of the ADA because its San Francisco WAV service was not comparable to its non-WAV service there, and because WAV service was "nonexistent elsewhere in the Bay Area."[37] Consequently, Plaintiffs' requested remedy was for Lyft to provide "WAV services comparable to non-WAV services in San Francisco County, Alameda County, and Contra Costa County."[38]

Before trial, Lyft's liability under the ADA was established in a summary judgment motion.[39] In that motion, Lyft argued that being forced to provide WAV service would fundamentally alter its business model, and therefore would be a per se *unreasonable* modification.[40] This is known as the "fundamental alteration defense."[41] The court disagreed with Lyft, stating that the company already provides WAV service in other regions, and thus "cannot argue that something it is already doing would fundamentally alter its business."[42] Although the court rejected Lyft's fundamental alteration defense, it found that the question of whether Plaintiffs' proposed remedy is a reasonable modification could not be answered without further facts and evidence presented at trial.[43]

After trial, the court ultimately found Plaintiffs' proposed modification to be unreasonable, because it believed Plaintiffs had requested a "performance standard" rather than a "concrete proposal or modification."[44] Despite the fact that Plaintiffs suggested several ways for

---

[36] Indep. Living Res. Ctr. S.F. v. Lyft, Inc., No. C1901438, 2020 U.S. Dist. LEXIS 205519, at *2 (N.D. Cal. Nov. 3, 2020).
[37] *Id*.
[38] *Id.* at *15.
[39] Indep. Living Res. Ctr. S.F. v. Lyft, Inc., No. C1901438, 2021 U.S. Dist. LEXIS 166229, at *24 (N.D. Cal. Sept. 1, 2021).
[40] *Lyft*, 2020 U.S. Dist. LEXIS 205519, at *10.
[41] *Lyft*, 2021 U.S. Dist. LEXIS 166229, at *24.
[42] *Lyft,* 2020 U.S. Dist. LEXIS 205519, at *17.
[43] *Id.* at *16.
[44] *Lyft*, 2021 U.S. Dist. LEXIS 166229, at *31.

Lyft to achieve the requested standard of accessibility,[45] the court felt that Plaintiffs put too much responsibility on Lyft to decide which methods or combinations thereof would actually allow them to meet the standard.[46]

In its conclusion, the court rolled out a new rule making clear that a plaintiff suing under § 12182(b)(2)(A)(ii) must "propose a concrete modification rather than merely propose that the district court order a defendant to undertake an iterative trial-and-error process to try to find a proposed modification."[47] The court next explained that a concrete proposal need not "outline every detail of the modification it proposes," but "the devil's in the details [and] [a] proposal must have enough meat on its bones to allow a fact finder to rate it as 'reasonable' (or not)."[48] This rule will certainly impact the outcome of subsequent litigation against TNCs, especially since Uber employs a forum selection clause requiring plaintiffs to bring suit exclusively in the District Court for the Northern District of California,[49] where this rule is binding precedent. The decision may have a ripple effect in other jurisdictions as well, should other districts decide to cite it as persuasive authority and adopt the "concrete" distinction.

On the one hand, this decision appears to be an attempt to prevent courts from forcing TNCs to adhere to performance standards that are unachievable. On the other hand, this ruling raises the important question of whether a typical ADA plaintiff is equipped to craft such a "concrete proposal."[50] Doing so would likely require an immense amount of knowledge, expertise, and resources. Without a doubt, a TNC itself has the best and deepest understanding of its capabilities and systems; a typical ADA plaintiff would not possess this institutional knowledge. Compounding these disadvantages is the vagueness surrounding what heights these proposals must reach in order to qualify as "concrete." This uncertainty is especially troubling given that the *Independent Living Resource Center San Francisco v. Lyft* Plaintiffs pointed to several practical options — all of which were rejected.

---

[45] *Id.* at *38–41(Plaintiffs' suggestions including partnerships with rental companies and contractors, raising ride prices to fund WAV service, and increasing driver incentives to "bump up" the supply of WAV drivers).

[46] *Id.* at *31–32.

[47] *Id.* at *29 (citing section 12182 even though plaintiffs sued under section 12184 because section 12184 cross-references section 12182 for descriptions of available remedies).

[48] *Id.*

[49] Capriole v. Uber Techs., Inc., 7 F.4th 854, 860 (9th Cir. 2021).

[50] *Lyft*, 2021 U.S. Dist. LEXIS 166229, at *30–32.

2. *Crawford v. Uber Techs.:* Providing WAV Service and Dissolving Discriminatory Policies Are Not Unreasonable Modifications as a Matter of Law

In *Crawford v. Uber Technologies, Inc.*,[51] three individuals who use motorized wheelchairs sued Uber for discrimination under ADA § 12184(b)(1)[52] and (b)(2) after Uber refused to provide WAV service in the plaintiffs' home cities of New Orleans and Jacksonville.[53] The injunctive relief requested by Plaintiffs was seemingly simple: that Uber provide WAV service akin to what Uber already provided in other cities,[54] and that Uber remove allegedly discriminatory policies.[55]

Two motions for summary judgment followed the filing of the lawsuit. In the August 2021 motion, the court discussed Plaintiffs' § 12184(b)(2) claims but did not address their subsection (b)(1) claims due to Plaintiffs' procedural error.[56] In the January 2022 motion, after Plaintiffs amended their complaint, the court turned to the claims brought under subsection (b)(1).[57]

In order to succeed on a motion for summary judgment, the moving party must prove "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[58] Although the Court denied summary judgment to both parties on the main issues of each motion, the fact that these issues could not be decided on legal arguments alone is significant; it shows there is a triable issue of material fact.

a. Provision of WAV Service Is Not a Precluded Remedy, Nor a Per Se Unreasonable Modification Under 42 U.S.C. § 12184(b)(2)

ADA section 12184(a) mandates that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services. . . ."[59] Section 12184(b) further defines such discrimination as "eligibility criteria that screen out or tend to screen out an individual with disabilities" and "the

---

[51] Note that *Lyft* was decided in September 2021, whereas *Crawford*'s last pre-trial motion was decided in January 2022, and its final decision was issued in July 2022.
[52] Crawford v. Uber Techs., Inc., No. 17CV06124, 2022 U.S. Dist. LEXIS 3679, at *3 (N.D. Cal. Jan. 7, 2022).
[53] *Crawford*, 2021 U.S. Dist. LEXIS 161969, at *2, *22–23.
[54] *Id.* at *29.
[55] *See Crawford*, 2022 U.S. Dist. LEXIS 3679, at *5.
[56] *Id.* at *5, *10 (stating that plaintiff's claims under subsection (b)(1) must fail because they were raised for the first time at summary judgment, not in the original complaint).
[57] *Id.* at *3.
[58] *Crawford*, 2021 U.S. Dist. LEXIS 161969, at *3; 42 U.S.C. §§ 12184(b)(3), (b)(5).
[59] 42 U.S.C. § 12184(a).

failure of [a transportation] entity to make reasonable accommodations . . . provide auxiliary aids . . . and remove barriers. . . ."[60] Plaintiffs applied these broad definitions in their motion for summary judgment and asserted that their requested relief — that Uber provide WAV service in their home cities — was a reasonable accommodation.[61] Uber subsequently cross-moved, arguing that provision of WAV service should be precluded as a remedy under subsection (b)(2), and in the alternative, that provision of WAV service should be considered an unreasonable modification as a matter of law.[62]

In its preclusion argument, Uber pointed out that while subsections (b)(3) and (b)(5) require entities which *purchase or lease* vehicles to provide WAV service, there is no respective requirement for companies which do *not* own or lease vehicles.[63] Uber extrapolated from this the idea that if Congress intended to preserve provisions of WAVs as an available remedy against non-purchasing or non-leasing transportation entities, it would have addressed the issue explicitly, rather than relying on the general language of subsection (b)(2) to effectuate this purpose.[64] The court disagreed, however, finding that subsections (b)(3) and (b)(5) are controlled by an "exceedingly narrow triggering event" (i.e. the purchase or lease of a vehicle), and as such can only guide an inquiry when that event occurs.[65] Thus, these two subsections bear no weight on what may serve as a reasonable modification under the broader and separate subsection (b)(2).[66] The court further stated that to widely impose or preclude a remedy under subsection (b)(2) would "go against the flexible standard of [the] subsection," and the crucial acknowledgement that "what might be 'reasonable' for one entity might be fatal to another."[67]

Next, the court turned to Uber's alternative argument that, even if WAV service is not a precluded remedy, it is still not a reasonable modification, and perhaps not a modification at all.[68] The court defines "modification" as "a change to an existing business practice," which "does not require the provision of additional or different substantive benefits."[69] Deciding whether a modification is reasonable involves a "fact-specific,

---

[60] 42 U.S.C. § 12184(b)(1)–(2).
[61] *Crawford*, 2021 U.S. Dist. LEXIS 161969, at *5.
[62] *Id.*
[63] *Id.* at *23–24; 42 U.S.C. § 12184(b)(3), (b)(5).
[64] *Crawford*, 2021 U.S. Dist. LEXIS 161969, at *24.
[65] *Id.* at *26–28.
[66] *Id.* at *28.
[67] *Id.* at *27
[68] *Id.* at *28–33.
[69] *Id.* at *30 (internal quotations omitted).

case-by-case inquiry"[70] which balances the necessity and effectiveness of the modification against the cost to the organization that would implement it.[71] Based on these rules, Uber argued that Plaintiffs' proposed remedy would fundamentally alter their services.[72] In addition, Uber asserted that Plaintiffs did not request a modification, but an "outcome" requiring different or additional services rather than an adjustment within their existing model.[73] The court flatly rejected Uber's argument, stating: "Plaintiffs make no such demand[s]," they simply "ask that Uber grant them access to the rideshare marketplace."[74]

Even though the court did not grant summary judgment to either party on these issues,[75] it is important that Uber's comparison of subsection (b)(2) with subsections (b)(3) and (b)(5), along with its fundamental alteration defense, were not successful here. If the court had granted summary judgment to Uber, it would have set a precedent that provision of WAV service could *never* be a reasonable modification, barring future plaintiffs in similar cases from requesting it as a remedy at all. However, the court's denial of summary judgment to both parties establishes that ADA claims like these (at least in the District Court for the Northern District of California) must be decided on a case-by-case basis informed by detailed factual examinations.

b. TNC Policies Need Not Be Explicitly Discriminatory for Policy Change to Be a Reasonable Remedy

A similar result occurred in *Crawford*'s January 2022 summary judgment motion, when the court addressed Uber's arguments on Plaintiffs' amended complaint on subsection (b)(1).[76] Under § 12184(b)(1), discrimination may include "eligibility criteria that screen out or tend to screen out an individual [or class of individuals] with a disability . . . from fully enjoying the . . . services provided by the entity, unless such criteria can be shown to be necessary for the provision of [those] services."[77] Given this definition, Plaintiffs requested in their amended complaint a remedy in the form of the abolition of Uber's policies (like the functional prohibition

[70] *Id.* at *25 (quoting Fortyune v. Am. Multi-Cinema, Inc., 364 F.3d at 1083 (9th Cir. 2004)).
[71] *Crawford*, 2021 U.S. Dist. LEXIS 161969, at *28.
[72] *Id.* at *36.
[73] *Id.* at *30 (internal quotations omitted).
[74] *Id.* at *31 (internal quotations and brackets omitted).
[75] *Id.* at *36.
[76] Crawford v. Uber Techs., Inc., No. 17CV06124, 2022 U.S. Dist. LEXIS 3679, at *3 (N.D. Cal. Jan. 7, 2022).
[77] 42 U.S.C. § 12184(b)(1).

of WAVs from the platform) which allegedly screen out individuals who use wheelchairs.[78]

Uber's first argument in its motion against Plaintiffs' amended complaint pointed out that Uber lacked a policy explicitly prohibiting WAVs.[79] Uber argued that because it lacked an explicitly discriminatory policy, it could not incur liability under subsection (b)(1), meaning Plaintiffs' requested policy changes should not be an available remedy.[80] Uber alternatively argued in this motion that Plaintiffs' failure to proffer evidence of any driver who was not permitted to operate a WAV on their platform should defeat their (b)(1) claim.[81] Plaintiffs contended that Uber's written policies alone are sufficient to show that accessible vehicles are effectively screened out, since they contain requirements (like prohibiting aftermarket seating alterations, a feature of most WAVs to allow access for motorized wheelchairs) which "would prohibit at least some WAVs" under a plain reading.[82]

In response to these arguments, the court concluded that "Uber's preferred reading [of subsection (b)(1)] does not eliminate a genuine dispute of fact" as to whether or not its policies *actually* screen out individuals with disabilities in violation of § 12184(b)(1) of the ADA.[83] However, the court also acknowledged that Uber cannot simply turn on WAV service, and instead must encourage enough of its drivers to operate WAVs such that there will be WAVs available for hire.[84] All in all, the court found that neither the text of Uber's policies, nor the lack of drivers who were prohibited from operating a WAV on Uber's platform, was sufficient for either party to establish whether these policies screen out people with disabilities in violation of subsection (b)(1).[85] Accordingly, the court denied Uber's motion for summary judgment, determining that more evidence was needed to reach a conclusion on this issue.[86]

The logical conclusion to be drawn from this decision is that — at least in the eyes of the District Court for the Northern District of California — requiring the dissolution of discriminatory screening policies could be considered a "concrete modification" applying the *Lyft* standard. This means challenged policies must be evaluated on a case-by-case basis

---

[78] *See Crawford*, 2022 U.S. Dist. LEXIS 3679, at *3, 5.
[79] *Crawford*, 2022 U.S. Dist. LEXIS 3679, at *8.
[80] *Id.*
[81] *Id.* at *9.
[82] *Id.*
[83] *Id.* at *8–9.
[84] *Id.* at *7.
[85] *Id.* at *9–10.
[86] *Id.* at *10.

according to the evidence presented. In addition, this decision implies that a TNC's policy need not explicitly restrict WAV service to be potentially discriminatory, in line with subsection (b)(1)'s "tends to screen out" language. Furthermore, this decision establishes that a TNC need not have actually rejected a WAV driver from its platform in order for its policies to be discriminatory, rather other facts must be presented and considered, such as whether these drivers were discouraged to apply in the first place.[87]

3. The Court Delicately Distinguishes *Crawford* from *Lyft*, Finding That Plaintiffs' Requested Remedy Is a Concrete, Though Unreasonable, Modification

With the context and procedural history of *Crawford* in mind, we turn to *Crawford*'s final opinion. The *Lyft* decision distinguishing performance standards from concrete modifications was issued in July 2022 — after *Crawford*'s initial motions of August 2021 and January 2022 but *before* its final decision in August 2022. Thus, as *Crawford* was held in the same district court as *Lyft*, *Lyft* became binding precedent for *Crawford*'s final opinion. In fact, since *Crawford* was decided so soon after *Lyft*, it became the first case obligated to apply *Lyft*'s new rule. While the plaintiffs in both *Crawford* and *Lyft* requested provision of WAV service as their remedy, the *Lyft* plaintiffs requested a level of WAV service comparable to the *non-WAV service* in several Bay Area counties,[88] whereas the *Crawford* plaintiffs requested WAV service comparable to *other WAV service* already provided by Uber in other regions.[89]

Upon initial consideration, it is unclear whether the slight variation between the requested remedies in these two cases would be enough to distinguish them under *Lyft*. Based on *Lyft*'s outcome, one might even *expect* that Plaintiffs' remedy in *Crawford* would constitute a performance standard rather than a concrete modification. However, the court finely distinguished *Crawford* from *Lyft*, and ultimately found that the modification proposed in *Crawford* is in fact concrete.[90] The Court explained: "Unlike in *Lyft*, there is not a specific performance standard that Uber must meet," and although "Plaintiffs point to different mechanisms Uber could use to implement WAV service . . . [t]he existence of multiple paths Uber could take to implement [it] does not make Plaintiffs' request an

[87] *Id.* at *9.
[88] Indep. Living Res. Ctr. S.F. v. Lyft, Inc., No. C1901438, 2020 U.S. Dist. LEXIS 205519, at *2–3 (N.D. Cal. Nov. 3, 2020).
[89] *See* Crawford v. Uber Techs., Inc., No. 17CV02664, 2022 U.S. Dist. LEXIS 131670, at *16–17 (N.D. Cal. Jul. 25, 2022).
[90] *Id.* at *17.

'iterative, experimental, or trial-and-error proposal[.]'"[91] The court further acknowledged that "Plaintiffs' requested modification is indeed a large [one]," but ultimately "[t]he size and breadth of [a] modification bears on its reasonableness, not whether it is a modification."[92]

The outcome of the *Crawford* court's analysis under *Lyft*'s new rule expands on and further clarifies the distinction between performance standards and concrete modifications. It offers the *Crawford* plaintiffs' requested remedy — WAV service in the given location equivalent to that which Uber already provides in other cities — as the first example of what a concrete modification could actually look like. It also fleshes out *Lyft*'s new rule with two analytical guideposts to help discern whether a proposed remedy is a performance standard or a concrete modification:

> (1) the existence of multiple paths to implementing a proposal does not preclude its status as a concrete modification, and
> (2) the size and breadth of a modification is irrelevant to a *Lyft* analysis, and should only be considered when assessing reasonableness.[93]

These guideposts seem to add more meat to the bones of the *Lyft* rule. *Lyft* does not provide much detail as to what constitutes a performance standard — it only tells the reader that they are looking at one. However, in *Crawford* we have both an example of a concrete modification as well as these two guideposts to illuminate *Lyft* analyses in the future.

Without *Crawford*'s clarification of the scope of *Lyft*'s rule, *Lyft* could have invalidated swaths of litigation against TNCs for lack of a concrete modification. After all, on *Lyft*'s ruling alone plaintiffs would be left to achieve an unspecified level of detail in their remedy proposals. Without further clarification on the required scope of these proposals, one could argue that *any* proposal for provision of WAV service only amounts to a performance standard. Even Plaintiffs' proposal in *Lyft* — our first example of a performance standard — did contain details and suggestions on how Uber might achieve their WAV service standard. Furthermore, ADA plaintiffs face the added challenge of acquiring the data and special knowledge of the inner workings of TNCs that are necessary to construct such a detailed proposal in the first place — information which TNCs are arguably much more poised to compile than their opponents in court.

If the *Crawford* court had found Plaintiffs' proposal to constitute a

---

[91] *Id.* at *16–17.
[92] *Id.* at *17.
[93] *Id.*

performance standard, the case would have ended there. But when the court decided that Plaintiffs' proposed modification was concrete, it could then continue its analysis to assess whether provision of WAV service is a *reasonable* modification, a question that had not been seriously considered in this District until now.

a. The Court Finds *Crawford* Plaintiffs' Proposed Modification Unreasonable, Though It Opines that This Does Not Preclude Success for Future Plaintiffs

Once the court decided that the *Crawford* Plaintiffs' requested remedy was in fact a concrete modification, it then proceeded to assess their proposal for reasonableness under 42 U.S.C. §§ 12184(b)(2), 12184(b)(1). In its analysis of Plaintiffs' subsection (b)(2) proposal, the court assessed the reasonableness of each method Plaintiffs suggested Uber could use to provide WAV service, including: incentive programs for drivers who personally own WAVs, a rental or leasing model, and commercial fleet partnerships.[94] In analyzing Plaintiffs' subsection (b)(1) proposal, the court investigated whether Uber's vehicle eligibility criteria alone effectively screened out people with disabilities, and in turn whether dissolution of these policies would constitute a reasonable modification.

The opinion's section on Plaintiffs' (b)(1) proposal was short. Plaintiffs argued that Uber's policy ban on vans encompassed minivans too, thus effectively screening out all vehicles capable of transporting electric wheelchairs.[95] However, Uber presented evidence at trial showing that minivans were in fact included on their list of acceptable vehicles, and "[t]hus, the ban on vans did not alone screen out most WAVs."[96] Uber's ban on aftermarket seating alterations came closer to violating subsection (b)(1), as Uber "failed to carry its burden of showing it cannot maintain [safety policies] while allowing WAVs that have undergone aftermarket seating modifications . . . according to safety standards to operate on its platform."[97] Despite this, the court found that "[t]he failure to allow WAVs onto the existing UberX platform . . . does not *alone* screen out people who use electric wheelchairs," because even allowing WAVs onto the platform would not guarantee that an individual requesting a WAV would be matched with one.[98] Therefore, Uber's "'eligibility criteria' does not itself screen out people with disabilities in violation of § 12184(b)(1)," and thus

[94] *Id.* at *19–34.
[95] *Id.* at *35.
[96] *Id.* at *36.
[97] *Id.* at *37.
[98] *Id.* at *37–38 (emphasis added).

no remedy is available to Plaintiffs on this claim.[99]

The court opened its discussion of Plaintiffs' subsection (b)(2) claim quoting the balancing test from *Fortyune v. American Multi-Cinema, Inc.* that is used to evaluate Plaintiffs' proposals. The test requires that the "determination of whether a particular modification is 'reasonable' involves a fact-specific, case-by-case inquiry that considers, among other factors, the effectiveness of the modification in light of the nature of the disability in question and the cost to the organization that would implement it."[100] Throughout the opinion, cost and effectiveness guided the court in its analysis and to its ultimate conclusion.

Utilizing this balancing test, the court made quick work of Plaintiffs' first three proposals. The idea of incentive programs to draw drivers who personally own WAVs onto Uber's platform was quickly dismissed because Plaintiffs could not show that the program would be effective.[101] The rental or leasing model was similarly dismissed upon testimony that Uber's partnership with rental company Avis in Washington and Boston had not been expanded "because '[Uber] ha[s] not been able to conclude that it's an effective method for getting WAVs onto the platform.'"[102] The dispatch model was also deemed unreasonable because Plaintiffs could not show that it would be effective outside of a regulatory framework, like the New York City ordinances which first implemented it.[103]

After dismissing these first three proposals, the court addressed commercial fleet partnerships, as this was the only proposal it felt might provide effective WAV service in New Orleans and Jackson.[104] The main issue for the commercial partnership model was whether the cost to implement it was reasonable in comparison to the level of service it would provide.[105] Based on evidence presented at trial, the cost to implement WAV service via commercial partnership was estimated to reach $800,000 per year (approximately $400 per ride) in New Orleans and $550,000 per year (approximately $1,000 per ride) in Jackson.[106] To the average reader, this may seem like pocket change for Uber, with its $38.7 billion in assets

---

[99] *Id.* at *38.
[100] *Id.* at *19.
[101] *Id.* at *21–22.
[102] *Id.* at *22–23.
[103] *Id.* at *23–24.
[104] *Id.* at *26–27.
[105] *Id.* at *27–33.
[106] *Id.* at *30.

and $17.5 billion in revenue from 2021 alone.[107] Regardless, the court noted that *Lyft* held similar costs to be "unreasonable, regardless of . . . Lyft's size, wealth, or level of resources," and ultimately adopted the rule that "[e]ven a vast bottom line does not transform exorbitant modifications into reasonable ones."[108]

The court did observe, however, that Uber could reduce its costs by combining the commercial partnership model with other proposals; for example, implementing an accessibility fee,[109] or cross-dispatching where WAV drivers use down time between WAV requests to complete non-WAV trips.[110] But in the end, the court did not seriously consider these cost-saving options on the grounds that the evidence to support them was "speculative,"[111] and because it was unclear how much could actually be saved while both maintaining desired levels of service and avoiding negative impacts on Uber's revenue.[112]

Although the court identified commercial fleet partnerships as the most plausible of Plaintiffs' proposals, it ultimately concluded that "[t]he anticipated cost here is too high for the limited service that would result, making the proposed modification unreasonable."[113] While the court recognized the importance of accessible transportation as "central to the idea of full participation in society,"[114] even stating that "WAV service has the potential to transform lives," it also acknowledged that "the high cost here would not even provide wheelchair users with the kind of 24/7 access UberX provides."[115] Due to the disproportionately high cost for the limited service this proposal would yield, the court ruled that Plaintiffs' requested remedy was unreasonable under § 12184(b)(2) of the ADA.[116]

Despite this holding, the court went out of its way to emphasize that its opinion should not be read to suggest "that a lawsuit demanding a rideshare company implement WAV service can never succeed."[117] It

[107] Uber Techs., Inc., Annual Report (Form 10-K) (Feb. 24, 2022), https://www.sec.gov/ix?doc=/Archives/edgar/data/1543151/000154315122000008/uber-20211231.htm#i41f3a487140149eaa115f268f79d2e06_88.
[108] *Crawford,* 2022 U.S. Dist. LEXIS 131670, at *31.
[109] *Id.* at *24–25. The proposal of an accessibility fee resembles the fee-based system implemented in California's TNC Access for All Act and subsequent regulations, *see* CAL. PUB. UTIL. CODE § 5440.5 (Deering 2023).
[110] *Id.* at *27.
[111] *Id.* at *32.
[112] *Id.*
[113] *Id.*
[114] *Id.* at *30.
[115] *Id.* at *32.
[116] *Id.*
[117] *Id.* at *32–33.

further devoted a paragraph to reprimanding Uber for the mischaracterization of its obligations under the ADA made in its brief in a section entitled "Uber Has Done More Than Its Fair Share on WAV And Should Not Be Punished For It."[118] The court expressed that "[w]hile as explained above, [Plaintiffs'] modification would not be reasonable . . . [it] would not constitute 'punishment' as characterized by Uber. Complying with the ADA and providing access to people with disabilities is not a punishment, it is the law."[119] The court continued on to state that "the argument that Uber has done its 'fair share' in providing WAV access in other cities mischaracterizes the purpose and design of the ADA," and further elaborated that "the language 'fair share' implies that WAV users are due a finite number of resources. The ADA does not adopt such an approach."[120]

In sum, *Crawford* follows *Lyft* to the extent that they both deny relief to their plaintiffs and rule in favor of TNC defendants. However, *Crawford* remains distinct from *Lyft* when read as a whole, as the analytical framework the *Crawford* court created in *reaching* its defendant-friendly holding may, in practice, have a beneficial effect for future plaintiffs. The two guideposts that the court established in its analysis under *Lyft*'s rule provide a structure that future plaintiffs can use to test their proposed modifications and thus ensure they are not in fact proposing unactionable performance standards. In addition, *Crawford*'s guideposts widen the scope of what modifications may be deemed concrete, by explicitly allowing large proposals and proposals that could be achieved through multiple paths. In providing these two guideposts and further deeming Plaintiff's proposal a concrete modification, this court gave future plaintiffs something they can point to as an example of a potentially successful concrete modification. We say 'potentially' because this court unfortunately did not give us an example of a successful proposal for provision of WAV service, since it decided Plaintiffs' proposal was unreasonable. Nonetheless, at least now plaintiffs have an example of what *not* to do.

Beyond its analysis, the court seemed to take note of how its decision might be received so soon after *Lyft*. As previously described, the court directly told the reader that its decision should not be understood to mean that provision of WAV service would *never* succeed as a reasonable remedy in this type of case.[121] Underlying this assurance is perhaps the court's unspoken awareness that two decisions with similar facts — both

---

[118] *Id.* at *33–34.
[119] *Id.*
[120] *Id.* at *34.
[121] *Id.* at *32–33.

brought under the ADA and ruled in favor of TNC defendants — would readily lead to certain assumptions about the viability of ADA claims against TNCs. Specifically, one might be led to assume that the District Court for the Northern District of California is fundamentally opposed to granting injunctions which order TNCs to provide WAV service under the ADA. We believe that one should refrain from making this assumption, however, and instead believe the court when it says that *Crawford*'s ruling is not determinative of all future cases tackling this issue. We believe that a proposal which *would* succeed as reasonable does exist.

II. Policy Pathways

A. Establish ADA Liability for TNCs

To ensure equal access to the transportation services TNCs provide, TNCs should be held liable under the ADA, as they were in both *Lyft* and *Crawford*. 42 U.S.C. § 12184 itself does not provide guidance on what constitutes a reasonable accommodation, but the United States Department of Transportation's (DOT) corresponding regulations governing traditional taxi services may offer a useful analog. 49 C.F.R § 37.29 contains regulations for private entities providing taxi services that assist with the stowing of mobility devices and prohibit drivers from refusing service to riders with disabilities.[122] Private entities providing taxi services are prohibited from charging higher fares for riders with disabilities.[123] Notably, however, the regulation does not require private entities to purchase or have available a certain number of WAVs, nor does it require that any non-WAVs (or WAVs for that matter) be replaced when the time arises.[124]

Applying regulations like those in 49 C.F.R. § 37.29 to TNCs would not place an undue burden on them. The policy would simply disallow drivers from refusing service to riders with disabilities if the driver has the means to accommodate the rider in the vehicle. For example, if a driver has room in their vehicle for a passenger with disabilities to stow a collapsible wheelchair, the driver must allow the passenger to do so or risk violating Title III of the ADA. Regulations akin to those in 49 C.F.R. § 37.29 would not require TNCs to take on a financial burden; instead, they would impose an administrative duty to enforce the nondiscrimination policy.

Opponents to imposing ADA liability on TNCs argue that doing so would start a chain reaction which would ultimately threaten the entire "on-

[122] 49 C.F.R. § 37.29.
[123] *Id.*
[124] *Id.*

demand" landscape.[125] DOT regulations compelling TNCs to ensure that drivers reasonably accommodate riders with disabilities could threaten the legal status of TNC drivers as independent contractors, since such a mandate would require TNCs to exert more control over their drivers. Given that TNCs have fought hard to maintain the classification of their drivers as independent contractors, a regulation mandating TNCs control their drivers as employees could endanger their entire operational scheme. In California, for example, workers are generally classified as independent contractors or employees through the "ABC test." Under this test, a worker is presumed to be an employee unless the hiring company can show:

> A. The worker is free from the control and direction of the hiring company in connection with the performance of the work;
> B. The worker performs work that is outside the usual course of the hiring company's business; and
> C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.[126]

The ABC test tends to classify TNCs' drivers as employees, but the recent passage of Proposition 22 in November 2020 changed the situation. Proposition 22 carved out an exception to the ABC test for app-based companies such as TNCs, allowing them to continue classifying their drivers as independent contractors with some additional extremely limited protections.[127] Establishing ADA liability on TNCs would compel them to exert more control over their drivers, thus strengthening the case to classify TNC drivers as employees. In California, Proposition 22 would likely maintain drivers' status as independent contractors, but TNCs would be unlikely to receive this treatment in other states without such carve-outs.

B. Incentivize TNC Partnerships with Public Transit Agencies

Though recent litigation against TNCs has centered around Title III of the ADA, Title II offers another pathway to improving transportation equity, through partnerships between TNCs and public transit agencies. Title II prohibits discrimination on the basis of disability by public entities.[128] If a TNC partners with a state or local transit agency to

---

[125] Carballo, *supra* note 28.

[126] *ABC Test*, CAL. LAB. & WORKFORCE DEV. AGENCY, https://www.labor.ca.gov/employmentstatus/abctest/ (last visited May 10, 2023).

[127] Sara Ashley O'Brien, *Prop 22 Passes in California, Exempting Uber and Lyft From Classifying Drivers as Employees*, CNN (Nov. 4, 2020), https://www.cnn.com/2020/11/04/tech/california-proposition-22/index.html.

[128] 28 C.F.R. § 35.101.

complement or replace the agency's paratransit service, the TNC will "stand in the shoes" of the agency and be subject to any applicable Title II provisions.[129] Specifically, the TNC would then have to offer equivalent service to the agency's paratransit service with respect to several factors including response times, fares, geographic areas of service, hours and days of service.[130]

A pilot program of one such partnership between Tri Delta Paratransit, Uber, and Lyft has already shown high popularity and effective cost reduction, from over $30 to less than $10 per ride.[131] As stated by Tri Delta Transit CEO Jeanne Krieg, such partnerships present a viable option to manage operating expenses and alleviate resource strains on paratransit agencies.[132] Thus, both paratransit and TNC services are made cheaper and more accessible through the same mechanism. This outcome in and of itself provides an incentive on the private contractual plane for both TNCs and public transportation agencies to seek out similar partnerships, but government may have a role in setting incentives as well.

Consider the city of San Leandro in California. The city provides individuals with disabilities the choice between a traditional shuttle service or "FLEX RIDES On Demand."[133] Under the FLEX RIDES system, passengers can travel to more specific destinations than a fixed-route shuttle provides and can travel to several surrounding areas outside San Leandro itself.[134] Rides are provided by Uber but are subsidized by the City such that passengers pay a $4 share of cost and the City pays the rest, up to $20.[135] This arrangement extends TNC services to residents with disabilities without forcing the passenger or TNC to cover the full cost of those services, removing prohibitive costs as an obstacle. Similar programs may be especially useful in regions where partnerships would not otherwise be profitable due to low demand and sprawling land use which makes trips longer and service areas larger. In these areas, TNC WAV service would be more difficult to provide without government incentives. Though local

---

[129] Bonnie Graves, *Shared Mobility and TNCs – Legal Considerations for Public Transit*, U.S. DEPT. OF TRANSP. FED. TRANSIT ADMIN., 7 (Oct. 29, 2019), *available at* http://onlinepubs.trb.org/Onlinepubs/studies/TRB-CAAS-18-01/FTALegal.pdf.

[130] *Id.* at 9.

[131] Stephanie Jordan, *Pairing TNCs and Paratransit*: *Tri Delta Transit's Door-to-Door Service Gets Boost With New Pilot Program*, CAL. TRANSIT ASS'N. (2018), *available at* https://caltransit.org/Portals/0/File/PARATRANSIT%20FINAL.pdf?ver=pePqcYmJT88WVsxWwDUTUA%3d%3d.

[132] *Id.*

[133] *Paratransit Services*, CITY OF SAN LEANDRO, https://www.sanleandro.org/496/Paratransit-Services (last visited May 10, 2023).

[134] *Id.*

[135] *Id.*

programs similar to FLEX RIDES have been replicated throughout the country, one can imagine broader, more encompassing programs instituted by state and even federal legislation. It is quite possible that subsidized WAV service will efficiently increase transportation equity in this sector in a cost-efficient manner, while also maneuvering the limitations of the ADA.

C. State Law

State governments can enact statutes that go beyond the ADA and specifically regulate the accessibility of TNCs. California provides one example of how this might be done, with its TNC Access for All Act (SB 1376).[136] Passed in 2018, this Act calls on the California Public Utilities Commission ("CPUC") to administer a system with two important features. First, the CPUC must hold workshops with stakeholders to determine community WAV demand and supply, as well as to develop other recommendations specific to an accessible on-demand transportation system.[137] Second, and most importantly, the CPUC must oversee the implementation of the TNC Access for All Fund: a pot of money that TNCs may access to offset expenses related to accessible rides if the TNC can demonstrate that it is improving access to WAVs on their platforms.[138] Under SB 1376 and further regulations promulgated by the CPUC, TNCs must pay a fee of ten cents per trip completed (non-WAV trips included) into this Fund.[139] Then, the CPUC sets geographically-tailored benchmarks reflecting different measures of improved WAV service, which includes benchmarks for decreasing passenger wait times and standards for increasing the proportion of trips completed (e.g reducing the common issue of driver cancellations).[140] Depending on the benchmarks a TNC meets and how much it improves its WAV service, that TNC may then be eligible for a reduced fee, exemption from these fees, or even full Fund reimbursements.[141]

It is not yet clear whether the TNC Access for All Act will ultimately succeed in increasing accessibility of TNC services. This program is still in its early stages, and the CPUC continues to fine tune its more detailed

---

[136] CAL. PUB. UTIL. CODE § 5440.5 (Deering 2023).
[137] *Id.*
[138] *Transportation Network Company (TNC) Access For All Reporting*, S.F. MUN. TRANSIT AGENCY, https://www.sfmta.com/transportation-network-company-tnc-access-all-reporting (last visited May 10, 2023).
[139] CAL. PUB. UTIL. CODE § 5440.5(a)(1)(B) (Deering 2023); *see also Ten Cent "Access for All Fee" Assessed on TNC Trips Beginning July 1, 2019,* CAL. PUB. UTIL. COMM'N (Apr.15, 2023), https://www.cpuc.ca.gov/news-and-updates/all-news/ten-cent-access-for-all-fee-assessed-on-tnc-trips.
[140] CAL. PUB. UTIL. CODE § 5440.5(a)(1)(J).
[141] *Id.* § 5440.5(a)(1)(B)(i).

provisions to ensure that TNCs are making actionable progress towards the objectives of the Act. In addition, TNC service was disrupted by the COVID-19 pandemic, muddling the CPUC's ability to measure TNC progress towards these objectives for the better part of two years. Moreover, the Act commands the CPUC to implement this program only in certain counties according to WAV demand and workshop outcomes, thereby inherently limiting the applicability of the program's results to the rest of the state.[142] The CPUC has selected nine counties for this purpose: Alameda, Contra Costa, Los Angeles, Orange, Sacramento, San Diego, San Francisco, San Mateo, and Santa Clara.[143] Since these are all fairly urban areas with large populations, the success of this program must be viewed within its geographic boundaries, and will not be reflective of transportation equity concerns in other regions of California.

Regardless, the Act is certainly making progress for WAV riders in its current operative state. It is comprehensive and balances the interests of involved parties quite skillfully. It even mirrors one of the proposed modifications suggested by the *Crawford* plaintiffs.[144] We see the Act as providing a balanced system of incentive, disincentive, and punitive measures, making it a comprehensive regulatory regime. The fee requirement disincentivizes maintaining an inaccessible fleet, while a multi-tiered system of rewards (fee reductions and exemptions, and especially reimbursements from the Access for All Fund) incentivizes not just compliance with the law but exceeding the law's basic requirements. Further, since TNCs are mandated by law to pay these fees,[145] they are highly incentivized to at least *consider* how they might improve the accessibility of their services if they seek to reduce or recoup these fees by meeting the CPUC's standards.

Additionally, this type of system does its best to balance the interests of individuals requiring WAV service with the business interests of TNCs. One could easily argue that it does not go far enough to advocate for equal access for people with disabilities. However, it does provide an example of how one statute in this nascent area of law has grappled with the needs of the businesses it seeks to regulate, as all regulatory law must. This task is made especially difficult considering TNCs' somewhat amorphous business model. Overall, the Act does well at avoiding placing too much of a

---

[142] *See id.* § 5440.5(a)(1)(D).

[143] *Decision on Track 1 Issues: Transportation Network Company Trip Fee and Geographic Areas*, CAL. PUB UTIL. COMM'N 15 (July 5, 2019), https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M309/K524/309524812.pdf.

[144] Crawford v. Uber Techs., Inc., No. 17CV02664, 2022 U.S. Dist. LEXIS 131670, at *24–25 (N.D. Cal. Jul. 25, 2022).

[145] *TNC Access for All Act*, S.B. 1376 § 5, 2017-2018 Reg. Sess. (Cal. 2018).

regulatory burden on TNCs. For example, it only applies in select counties such that TNCs can limit WAV resource expenditure to improving WAV service in those crucial regions. Thus, money will not be wasted trying to create a WAV market where there is no demand for the service, or in more rural areas where TNC services are in shorter supply generally. The Act also avoids jeopardizing TNCs' business models based on the categorization of their drivers as independent contractors. In requiring drivers to purchase, lease, or operate WAVs, a TNC could be said to exercise substantial control over their drivers, thus categorizing them as employees. Instead, the Act allows each TNC to create and apply its own methods for improving equitable access to its services, so it can do so in accordance with its own needs, objectives, and business philosophy.

In essence, the Act makes improving WAV service and reaching incentive benchmarks a flexible, customizable, and hopefully less burdensome task for TNCs. If this sounds familiar, similar flexible characteristics from the *Lyft* plaintiffs' proposed remedy were what made it an "iterative trial-and-error process" rather than a concrete modification.[146] But as a state law, the Act sources its regulatory authority from the broad police power endowed upon each state to govern itself as it sees fit. Therefore, the Act need not worry about the ADA's reasonable modification requirements, and can instead look beyond the ADA to create a regulatory framework specifically tailored to increasing accessibility in this sector, irrespective of the way transportation equity is regulated at the federal level.

Conclusion

State policy, such as the TNC Access for All Act, and federal policy explicitly expanding the provisions of the ADA to incorporate TNCs, would both be effective steps to ensuring equitable access to transportation for individuals with disabilities nationwide. More consistent imposition of liability under the ADA on TNCs would compel these companies to provide equal access to their services and would be most effective if paired with public transit partnerships and subsidies which avoid saddling the TNC industry with undue burdens.

While a distinction between performance standards and concrete modifications has been established by *Independent Living Resource Center San Francisco v. Lyft*, this is only binding precedent in one federal district. This decision may foreshadow continued challenges for plaintiffs in the remedy phase of ADA litigation within and outside of Northern California,

---

[146] Indep. Living Res. Ctr. S.F. v. Lyft, No. C19-01438, 2021 U.S. Dist. LEXIS 166229, at *29 (N.D. Cal. Sept. 1, 2021).

but ultimately the decision rests with each court whether to follow *Lyft*'s rule as persuasive authority or reject it in favor of their own evaluation of a remedy's reasonableness under the ADA. In California, though, plaintiffs may be able to point to the State's TNC Access for All Act, which has set regulatory performance standards for California TNCs operating in select counties, as a potential guidepost for what may be considered a reasonable remedy. While this regulation may serve as such a guidepost within California's borders, it may not have broader national application in the absence of legislative action in other states. In any regard, it remains an open question whether future plaintiffs will be successful in proposing reasonable concrete modifications in the Northern District of California, especially now that the District has an analytical framework at its disposal after *Crawford*'s final ruling.

In brief, real effective improvement of transportation equity in this sector will likely require advancements from all sides — federal and state law, ADA litigation, and TNCs doing their part to make their services accessible and equitable.