

501(C)(3) Veterans Non-Profit

STATEMENT OF

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PARALYZED VETERANS OF AMERICA

BEFORE THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

CONCERNING

“ENHANCING CONSUMER PROTECTIONS AND CONNECTIVITY IN AIR TRANSPORTATION”

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Chair Cantwell, Ranking Member Cruz, and members of the Committee, Paralyzed Veterans of America (PVA) thanks you for holding this important hearing to consider the experience of air travel passengers in the development of the next reauthorization of the Federal Aviation Administration (FAA). PVA, a congressionally chartered veterans service organization, serves veterans who have incurred a spinal cord injury or disorder. The vast majority of our members use wheelchairs or other assistive devices for mobility and have a strong interest in ensuring that commercial air travel is safe and dignified for all passengers with disabilities.

Almost 40 years ago, President Ronald Reagan signed the Air Carrier Access Act (ACAA) into law. The ACAA prohibits disability-based discrimination in air travel and requires air carriers to provide accessibility for and accommodations to passengers with disabilities. PVA led the advocacy efforts for passage of the law based on the experiences our members encountered while traveling by air, including being refused passage simply because of their disability. Four years after the passage of the ACAA, Congress passed another PVA-supported bill, the Americans with Disabilities Act (ADA). Although the ADA requires disability access in airports, shuttles, and other forms of mass transportation, it does not apply to commercial air travel.

The ACAA advanced equal opportunity for passengers with disabilities. It required air carriers to provide passengers with disabilities the opportunity to preboard, if additional time or

assistance is needed to board the aircraft; timely assistance in boarding and deplaning; proper stowage of assistive devices; and appropriate seating accommodations. After decades of discrimination in air travel, the passage of the ACAA gave hope to passengers with disabilities that their air travel experience would improve.

Despite the ACAA's protections, the current air travel experience for passengers with disabilities, particularly wheelchair users, is, at best, frustrating and, at worse, unsafe. Wheelchair users must surrender their customized wheelchair for stowage either in cargo or, in the case of certain manual wheelchairs, the cabin. The passenger must then be transferred to an aisle chair that allows them to enter the aircraft and traverse the aircraft's aisle, which is very often narrower than the passenger being pushed through it. Aisle chairs are devices designed solely to navigate the narrow aisle. The chairs are often too small for the individual, have limited padding, cannot be propelled by the user, and are prone to tipping. Once on the aisle chair, the passenger is then maneuvered backwards onto the aircraft and pulled down the aisle to the passenger seat. The struggle then begins anew to transfer the passenger from the aisle chair to the seat within the tight confines of the cabin.

Throughout the boarding and deplaning process, passengers are assisted by airline staff or, more frequently, their contractors. Many of these individuals have limited training, are unable to effectively communicate with passengers, and are required to lift and transfer individuals with significant disabilities without sufficient staffing and other resources. The boarding and deplaning process does not protect the health and safety of passengers with disabilities. Instead, it is unsafe, and regularly results in passengers receiving, at the very least, bumps and bruises and, in other cases, far more significant injuries.

Unlike mass transportation vehicles regulated by the ADA, aircraft have very few, if any, features to facilitate access by passengers with disabilities. There is no guaranteed path of travel to allow a wheelchair user to board the plane, no specially designated area for them to fly while seated in their wheelchair, no wheelchair accessible lavatory on the vast majority of single-aisle aircraft, and limited or no communications accessible to those who are deaf or blind.

The lack of accessibility features has resulted in significant safety issues for passengers with disabilities, particularly wheelchair users. PVA's President, who lives in Florida, was severely injured four years ago when he was dropped while attempting to board an aircraft. He fractured his tail bone as a result of this incident and subsequently developed skin breakdown and a bone infection. As a result of his injuries, he spent several months inpatient at a VA medical center.

PVA's Immediate Past President, who lives in Washington, testified before the House Transportation and Infrastructure Committee, Aviation Subcommittee in 2019 about a time when he had severely injured his hip and needed to fly for PVA business. As he boarded the plane using an aisle chair, his knee hit nearly every armrest on the way back to his seat. He recalled that each time he hit his knee that the jolt sent pain radiating to his injured hip.

Earlier this month, another PVA member from Washington state attended PVA's Advocacy Legislation Seminar in Washington, DC. On his return trip, his power wheelchair was damaged. Specifically, the controller arm was broken and his backup camera was missing. It took three hours at baggage claim for personnel to find someone who knew how to file the damage report. The third-party contractor handling the repair acted quickly once the claim was filed and the first adjuster came to see the damage within a couple of days. However, it has now been well over a week and he is still waiting for the parts needed to fix the damage. In the meantime, when he takes his hand off of the wheelchair's joy stick, it swings out of position.

Another PVA member, the national director from PVA's Texas Chapter, will no longer travel by air. She first traveled post-injury to an adaptive sporting event. On the trip from San Antonio to Aspen, her left shoulder was injured on one of the transfers to the aisle chair due to airline assistants incorrectly strapping her to it. During the return trip, on one of the transfers from the aisle chair to the airline seat, she received a large abrasion on the bottom side of her thigh. On her second and last airline trip, she arrived at her destination to find that her 450-pound power wheelchair did not work. She and her broken chair had to be pushed so that she could leave the airport. Until she can drive her wheelchair onto a plane and lock it into place and be safe, she and her husband, who serves as her caregiver, will not use airline transportation and instead drive wherever they need to travel.

These anecdotal reports were validated by the results of a survey conducted by multiple disability organizations, led by PVA, following the 35th anniversary of the ACAA.¹ Over 1,200 individuals responded to the survey, which covered a wide variety of accommodations for passengers with disabilities.

Many respondents reported that even though they traveled by air they were very concerned about encountering physical barriers. The top reason to avoid air travel was concerns about wheelchair damage. Respondents also reported they were fearful that they would not be safely transferred from their wheelchair to the aisle chair and into the passenger seat and vice versa.

When an airline damages, loses, or delays a passenger's wheelchair, it is a significant and serious problem that endangers their health and limits their mobility and independence. In the worst cases, it can mean the end of the trip as the individual is forced to stay in a hotel bed while they wait for the repair of their wheelchair. It can also mean weeks or months of having to use their own damaged wheelchair or an ill-fitting loaned wheelchair. Following her personal wheelchair being severely damaged on a flight, disability advocate Engracia Figueroa was forced to use an ill-fitting wheelchair that resulted in medical complications that led to her untimely death in October 2021, three months after her trip.

Nearly 70 percent of survey respondents who travel with a wheelchair or scooter reported having it damaged by the carrier. Furthermore, almost 56 percent said that their wheelchair or

¹ Paralyzed Veterans of America, The ACAA Survey: Overview of Survey Results Regarding the Air Travel Experience of Passengers with Disabilities, <https://pva.org/wp-content/uploads/2022/09/2022-ACAA-Survey-Results-FINAL.pdf>.

scooter has been delayed. Seventeen percent reported having their wheelchair or scooter lost.

The 2018 FAA Reauthorization required the U.S. Department of Transportation (DOT) to implement within 60 days of passage a requirement for large domestic air carriers to submit monthly reports on the number of wheelchairs and scooters they enplane and the number subsequently mishandled (lost, damaged, or delayed). Between 2019 and 2022, over 32,000 wheelchairs and scooters were mishandled by airlines. Each one of these situations represents a person whose life was disrupted or impeded until their device was repaired, located, or replaced.

Over half of survey respondents needed to board and deplane using an aisle chair. Many reported that aisle chairs are difficult or unsafe to use. In fact, 16 percent of respondents reported being dropped and 23 percent reported being injured in the boarding and deplaning process. One passenger said, “the attendants rarely know how to transfer or to strap me in.”

Not being able to use the restroom during a flight ranked high on the list of reasons survey respondents avoided air travel. In fact, lack of lavatory access, even on a cross country flight, was reason enough for nearly 60 percent of respondents to avoid air travel unless absolutely necessary. The 2018 FAA Reauthorization Act required the U.S. Government Accountability Office (GAO) to study lavatory access on aircraft, including access for passengers with disabilities. GAO found that although accessible lavatories are available, “carriers do not often choose to acquire them.”² In 2019, of the top eight domestic air carriers, only 4.5 percent of their single-aisle aircraft had accessible lavatories. Four of these carriers had no accessible lavatories in their fleets.

After years of delay, nearly 40 years after the ACAA became law, DOT appears to be in the final stages of publishing a rule requiring larger single-aisle aircraft to have an accessible lavatory. Finally, passengers with mobility impairments and those who need the assistance of a caregiver would be able to enter a lavatory using an onboard wheelchair with an assistant and close the door. Nearly seven years ago, advocates and the airlines agreed to a rather lengthy timeline, at the urging of the carriers, that would require aircraft ordered 18 years or delivered 20 years after the date of the final rule to have an accessible lavatory. Since air carriers have been on notice for over six years that this requirement was coming, we believe that as a matter of equity DOT should shorten the implementation timeline by the number of years this rule has been delayed. Unfortunately, even in a best-case scenario, it will still be decades until the requirement is fully implemented.

In the last year, we have continued to hear reports of insufficient staffing to perform lifts of passengers during the boarding and deplaning process, misplaced wheelchairs that result in injury, broken wheelchairs, humiliation due to the lack of bathroom access, and even threats to contact law enforcement when passengers refused to deplane before their wheelchair was

² U.S. Gov't Accountability Off., GAO-20-258, Aviation Consumer Protection, Few U.S. Aircraft Have Lavatories Designed to Accommodate Passengers with Reduced Mobility 14 (2020), <https://www.gao.gov/products/gao-20-258>.

returned to them. An August 2022 New York Times article, “Embarrassing, Uncomfortable and Risky: What Flying is Like for Passengers Who Use Wheelchairs,”³ documented the difficulties PVA’s President experiences when he travels by air.

There are very few options for passengers who do not receive proper disability-related assistance. Passengers often share their frustration on social media and may file a complaint with the airline and/or DOT. The Department can issue cease and desist orders and levy civil penalties for ACAA violations; however, the largest financial penalty in recent years was in 2016 for \$2 million.⁴ That fine, much of which was credited to the carrier, was an anomaly.

In 2019, the most recent year for which statistics are available, passengers filed nearly 42,500 disability-related complaints directly with over 185 foreign and domestic airlines, which was an increase of nearly 15 percent over 2018. That same year, passengers filed approximately 900 disability-related complaints directly with DOT. In 2021, passengers filed nearly 1,400 DOT complaints. The number of DOT complaints filed in 2022 has not yet been released.

Despite a significant focus in the last FAA Reauthorization on improving the safety and dignity of passengers with disabilities, the needle has barely moved. In fact, the percentage of wheelchairs and scooters mishandled in 2022 was the same percent as those mishandled in 2019, the first full year for which airlines were required to report such numbers.⁵ The safety of passengers with disabilities is at stake and Congress must act to bring their air travel experience into the 21st century.

The problem with commercial air travel is that aircraft do not have proper accessibility features to accommodate passengers with disabilities. Passengers will continue to be injured and wheelchairs delayed, damaged, or lost until travelers can travel onto the plane using their personal wheelchair and transfer to a passenger seat or stay safely seated in their devices. Commercial air travel has been given a pass for far too long under the guise that requiring access will require the loss of too much revenue without any regard for the price wheelchair users must pay with their bodies during air travel. People with disabilities will not be able to effectively compete for jobs, vacation with their families, or seek needed medical care until safe and dignified air travel is guaranteed for all passengers with disabilities.

We strongly believe that the Air Carrier Access Amendments Act (ACAAA) (S. 545) must be included in the next FAA Reauthorization Act to improve the air travel experience of passengers with disabilities. This critically important legislation, which is currently supported by 30 veterans, disability, and consumer organizations, would provide safe and dignified air travel for

³ Amanda Morris, *Embarrassing, Uncomfortable and Risky: What Flying Is Like for Passengers Who Use Wheelchairs*, N.Y. Times, Aug. 8, 2022, https://pva.org/wp-content/uploads/2022/08/NYT_Embarassing.-Uncomfortable-and-Risky_08.08.2022.pdf.

⁴ U.S. Department of Transportation, United Airlines, Inc. Order 2016-1-3, <https://www.transportation.gov/airconsumer/eo-2016-1-3>.

⁵ Press Release, U.S. Department of Transportation, Air Travel Consumer Report: December 2022, Full Year 2022 Numbers, Mar. 16, 2023, <https://content.govdelivery.com/accounts/USDOT/bulletins/34f2450>.

passengers with disabilities by requiring airlines to operate aircraft that meet accessibility standards and improving enforcement of the law.

Accessibility standards for larger aircraft used in commercial air travel are needed to provide a safe and dignified air travel experience for wheelchair users. The ACAA would require the DOT Secretary through direct consultation with the U.S. Access Board to formulate standards to address effective boarding and deplaning, visually accessible announcements, in-flight entertainment, seating accommodations, lavatories, and stowage options for assistive devices. Five years after the standards are finalized, airlines would need to operate aircraft that comply with them.

Standards related to boarding and deplaning would require “ensuring that there is a route accessible for individuals to board and deplane the aircraft from their personal assistive devices, including wheelchairs.” We believe this provision would allow a wheelchair user to board in their own wheelchair and roll to a designated passenger seat, most likely at the front of the aircraft, and transfer to the seat. On a majority of larger aircraft, the passenger boarding door is already wide enough to allow a wheelchair to enter the cabin. The chosen layout of the cabin hinders movement. Requiring a proper path of travel would allow wheelchair users to avoid using an aisle chair for boarding and deplaning. The standards would also include in-cabin wheelchair restraints, if deemed technologically feasible.

The 2018 FAA Reauthorization Act required the U.S. Access Board to conduct a study of the feasibility of in-cabin wheelchair restraint systems. The Access Board carried out that requirement through the National Academy of Sciences’ Transportation Research Board (TRB).⁶ The TRB study was unable to “identify any issues ... that seem likely to present design and engineering challenges so formidable that they call into question the technical feasibility of an in-cabin wheelchair securement system and the value of exploring the concept further.” The study acknowledged that further assessment was needed, “particularly to understand how secured personal wheelchairs are likely to perform relative to FAA’s security criteria in restraining and protecting occupants during a survivable airplane crash or emergency landing,” and called on DOT and FAA to undertake research on these issues. It also called on the Access Board to assess the demand from people with disabilities to fly while seated in their wheelchairs to inform the number of aircraft that would need to be modified to provide meaningful access, assuming remaining feasibility questions are satisfied.

We call on Congress to include language in the next FAA Reauthorization directing appropriate agencies and administrations on completion of the next milestones, including the economic and financial feasibility of airlines implementing in-cabin wheelchair restraint systems, and providing funding necessary to accomplish them. We would also support inclusion of tax credits or other incentives to facilitate expedited adoption by air carriers.

⁶ Transportation Research Board, Technical Feasibility of a Wheelchair Securement Concept for Airline Travel: A Preliminary Assessment, <https://www.access-board.gov/files/research/trb-final-report-sept2021.pdf>.

In terms of wheelchair stowage, the standards would require “adequate in-cabin stowage of assistive devices.” We believe that this would allow more types of manual wheelchairs to be stowed in the cabin for those who wish to fly while seated in a passenger seat. The standards would further require the option for “proper stowage of assistive devices in the cargo and ensure that cargo doors and the cargo holds allow such devices to be enplaned and stowed upright.” This change is needed to ensure that when wheelchairs are stowed in cargo they can be done so in a way that is safe for airline workers and protects the wheelchair from damage.

Although the 2018 FAA Reauthorization Act allowed DOT to assess triple the amount of the allowable fine for wheelchair damage or injury to a passenger with a disability, the Department has yet to assess any fines under this provision. The previously cited complaint data shows that the lack of fines levied is not due to a decrease in wheelchair damage or passenger complaints. The ACAA would strengthen enforcement of the law by requiring DOT to levy civil penalties for mishandled wheelchairs, physical harm to a passenger with a disability, lack of proper aisle chair assistance, improperly denied boarding for a passenger with a disability, inappropriately denied access for a service animal, and gross negligence.

The ACAA would also require the DOT Secretary to refer complaints to the Department of Justice (DOJ) when there is reasonable cause to believe that violations of the law are a pattern or practice or if it “raises an issue of general public importance.” Referral of cases to DOJ will put commercial air travel in the same position as other providers of mass transportation. It would also recognize that the ACAA is not a customer service standard but a civil right. The Attorney General would then be able to pursue a civil action on behalf of a passenger.

The legislation would also formally establish a private right of action to institute additional remedies, without removing DOT’s role in the administrative process. Prior to the 2001 Supreme Court case, *Alexander v. Sandoval*,⁷ the Fifth, Eighth, and Ninth Federal Circuit Courts recognized a private right of action under the ACAA. In *Tallarico v. Trans World Airlines, Inc.*,⁸ a minor with cerebral palsy was not permitted to fly unaccompanied. The plaintiff alleged the airline violated the ACAA by denying her the right to fly because of her physical conditions. The court supported the jury’s award of emotional distress damages, in the amount of \$80,000, but did not analyze whether punitive damages could be recovered.⁹ In *Tunison v. Cont’l Airlines Corp.*,¹⁰ the deaf and blind plaintiff was not allowed to fly alone. The court found that the airline violated the ACAA, but awarded no damages. After *Sandoval*, the Second, Fifth, Ninth, Tenth, Eleventh, and D.C. Circuit Courts have subsequently ruled that there is no private right of action under the ACAA.¹¹ Federal preemption further hinders access to potential remedies by

⁷ 532 U.S. 275.

⁸ 881 F.2d 566 (8th Cir. 1989).

⁹ *Id.* at 571, 572.

¹⁰ 162 F.3d 1187 (D.C. Cir. 1998).

¹¹ *Lopez v. Jet Blue Airways*, 662 F.3d 593 (2d Cir. 2011); *Stokes v. Southwest Airlines*, 887 F.3d 199 (5th Cir. 2018); *Segalman v. Southwest Airlines Company*, 895 F.3d 1219 (9th Cir. 2018); *Boswell v. Skywest Airlines, Inc.*, 361 F.3d 1263 (10th Cir. 2004); *Fox v. Am. Airlines, Inc.*, No. CIV.A. 02-2069 RMU, 2003 WL 21854800 (D.D.C. Aug. 5, 2003), *aff’d*, 389 F.3d 1291 (D.C. Cir. 2004), and *aff’d*, 389 F.3d 1291 (D.C. Cir. 2004); and *Love v. Delta Airlines*, 310 F.3d 1347 (11th Cir. 2002).

limiting applicability of state law.

Restoring a private right of action would allow more remedies for passengers who suffer ACAA violations. It would also allow for injunctive relief to foster policy changes that would allow passengers and airlines to partner together to make changes that would benefit all people with disabilities. In calling for Congress to pass the ACAAA, an editorial from the Las Vegas Sun noted the support major airlines received from taxpayers during the COVID pandemic and said, “If the American people are expected to help bail out the airline industry, the airline industry should do everything in its power to serve all Americans.”¹²

We believe that increased aircraft accessibility, and improved enforcement options will lead to safer travel experiences for passengers with disabilities. PVA members and others with disabilities have waited long enough for safe access to air travel. We know how to improve the experience of passengers with disabilities. We simply need to do it.

Until wheelchair users are able to board and deplane aircraft using their personal wheelchairs and have the option to access an aircraft wheelchair space or have their wheelchair safely stowed either in the cabin or cargo, air carriers must improve training and provide job aid materials for workers. In February 2022, PVA submitted a formal request for rulemaking to DOT about the assistance provided to passengers who use aisle chairs, information airlines are required to collect related to incidents in boarding and deplaning, and how airlines assist passengers when a wheelchair or scooter is mishandled. PVA called on the Department to require air carriers to have specific personnel who are highly trained in transfer techniques and the use of boarding and deplaning devices. The training provided to these assistants must be “hands on” and assistants must receive an annual certification of their skills, including their ability to follow directions from passengers about how to effectively and safely assist them. Furthermore, the assistants must be given properly maintained equipment that meets standards that address not only the needs of the airline, but also the needs of the passenger and the assistants.

In addition, DOT must require airlines to provide ramp personnel with the proper equipment to safely enplane and deplane assistive devices. The Department must also establish a timeline for airlines to replace or repair a wheelchair or other assistive device or provide compensation for a device’s damage, as well as requiring air carriers to provide adequate interim accommodations. DOT must also clarify that the ACAA requires air carriers to return all wheelchairs and other assistive devices in the condition in which they were surrendered by the passenger.

DOT has indicated that a proposed rule will be published later this year. We ask Congress to include a provision in the FAA Reauthorization requiring the Department to complete this rulemaking within one year of the Reauthorization’s enactment. We also believe that the next FAA Reauthorization should require DOT to provide greater analysis and aggregation of the

¹² Editorial, *Support the Spirit of the ADA While Protecting Businesses from Abuse*, Las Vegas Sun, Mar. 10, 2023, <https://lasvegassun.com/news/2023/mar/10/support-the-spirit-of-the-ada-while-protecting-bus/>.

wheelchair and scooter data received from airlines, including separating incidents related to manual wheelchairs, power wheelchairs, and scooters, to look for trends, as well as develop solutions to address areas of specific concern focused on attacking the root cause of mishandled assistive devices.

Passengers with disabilities also need improved access to appropriate seating accommodations. The ACAA requires airlines to accommodate passengers with disabilities only in the class of service purchased. Thus, a passenger who purchases an economy ticket is not required to be accommodated in premium economy even if seating in that section would better accommodate the passenger.

The next FAA Reauthorization should require airlines to provide a passenger with a disability and at least one companion with a needed seating accommodation, even if in another class of service, as long as no more than one passenger will be displaced in that class of service. We believe that passengers with disabilities should not be required to pay higher ticket prices simply because they wish to limit their time on an aisle chair and the bruises and abrasions they may receive being transported to their seat further back in the plane. Air carriers must also clearly alert passengers with disabilities about the availability of seating accommodation options.

Furthermore, airlines should be required to accommodate wheelchair users on another aircraft, including that of another airline, if the passenger's wheelchair will not fit on the aircraft designated for the passenger's flight. Wheelchair users should not be forced to pay a higher ticket price if the only aircraft type that will accommodate their assistive device is used on a more expensive flight. They should also not be required to fly on an airline that is more expensive solely because that airline uses an aircraft that will accommodate the passenger's wheelchair. Passengers with disabilities should be able to benefit from competition and low fares like other Americans.

Finally, we support reauthorization of the ACAA Advisory Committee, which was first authorized in the 2018 FAA Reauthorization. The Committee, which included airline and airport representatives; wheelchair manufacturers; and veterans, disability, and service animal organizations reviewed DOT's draft of the Passengers with Disabilities Bill of Rights and considered recommendations related to ticketing practices and seating accommodations, stowage of assistive devices, and assistance at airports and on aircraft and related training. Although the Committee's final report consisted primarily of recommendations concerning the need for further study of the issues or adoption of best practices, we believe the Committee should continue and hope it will be a greater force for change in the future.

Addressing air travel problems is not only the right thing to do, it is also a smart business decision. Over 75 percent of respondents from the earlier referenced survey said that if the air travel experience of passengers with disabilities improved they would fly at least a few times a year. Fifteen percent said they would fly monthly.

PVA appreciates the opportunity to express our views. I would be happy to answer any questions.