
501(C)(3) Veterans Non-Profit

STATEMENT OF

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PARALYZED VETERANS OF AMERICA

BEFORE THE

HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON AVIATION

CONCERNING

“ACCESSIBLE AIR TRAVEL: ADDRESSING CHALLENGES FOR PASSENGERS WITH DISABILITIES”

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Chairman Larsen, Ranking Member Graves, and members of the Subcommittee, Paralyzed Veterans of America (PVA) thanks you for holding this important hearing on improving the experience of air travel passengers with disabilities. PVA is a congressionally chartered veterans service organization. All of PVA’s members are honorably discharged veterans who have incurred a spinal cord injury or disorder. Virtually all PVA members use wheelchairs or other assistive devices for mobility, and have a significant interest in ensuring that commercial air travel is safe and dignified for all people with disabilities.

President Ronald Reagan signed the Air Carrier Access Act (ACAA) into law nearly 40 years ago. The ACAA, which prohibits disability-based discrimination in air travel, was passed following a U.S. Supreme Court decision in *Department of Transportation v. Paralyzed Veterans of America*, 477 U.S. 597 (1986). In this case, the Court held that air carriers were not subject to Section 504 of the Rehabilitation Act of 1973,¹ as amended, unless they received direct federal financial assistance. PVA subsequently led the advocacy efforts to ensure congressional passage of protections that would finally prohibit discrimination against people with disabilities in air travel.

¹ Section 504 of the Rehabilitation Act prohibits recipients of federal funds from excluding or denying individuals with disabilities an equal opportunity to benefit from federally funded programs and services.

The ACAA did improve equal opportunity for passengers with disabilities. Prior to its passage, ticketed passengers could be denied boarding without recourse simply because they were disabled. With the passage of the law, air carriers were required 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.

Despite these improvements, the 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 aisle without regard for the passenger who must use it to board or deplane the aircraft. The chairs are poorly designed to accommodate passengers because they have limited padding, cannot be propelled by the user, and are prone to tipping. Throughout this 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 the passengers, and are required to lift and transfer individuals with significant disabilities without sufficient staffing and other resources. The process is not designed to meet the needs of passengers with disabilities. It is precarious and has resulted in passenger injuries and deaths.

In October 2021, PVA marked the 35th anniversary of the passage of the ACAA by working with other organizations to survey the current experience of passengers with disabilities in air travel.² The purpose of the survey was to gather information to inform our advocacy to improve the air travel experience for all passengers with disabilities. Between October 4-December 6, 2021, 1,262 individuals responded to the survey, which covered a wide variety of accommodations for passengers with disabilities. Some questions were not applicable to all travelers and their responses were removed from the data to depict the accurate experience of passengers who need particular types of accommodations.

The results of the survey supported the anecdotal reports we regularly receive from wheelchair users. Over half of the survey respondents had flown in the past 12-24 months, despite COVID which deterred many passengers from traveling, and the vast majority noted that they typically fly once or twice a year. Approximately nine percent indicated, however, that they do not fly. One respondent said, "I am tired of getting dropped when transferring from my chair to the transfer chair on an airplane." Another passenger said, "I stopped traveling by air because the transferring to and sitting in airline seating is too hard on my body." Still another said, "the risk of damage to my wheelchair is too great - my wheelchair is my legs, and if I arrive at my destination and find it damaged, there are serious consequences to me."

Although many respondents reported traveling by air, we asked them to select from a list of reasons those that might cause them to avoid it. Of the more than 1,000 respondents, many were overwhelmingly concerned with physical barriers that they would face during a flight. The top reason to avoid air travel was concerns about wheelchair damage. A related concern, passengers also reported being afraid for their personal safety in transferring from their wheelchair to an aisle chair and into an aircraft seat. Not being able

² 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>.

to use an aircraft lavatory because it is inaccessible also ranked high on the list of reasons to avoid 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.

When a wheelchair is lost, damaged, or delayed, it is a significant and serious problem for the individual who relies on that device for their health, mobility, and independence. It can mean the end of the trip as the individual is forced to forgo the entire reason for their travel while they wait on the repair of their wheelchair. It can also mean weeks or months of having to use a loaned wheelchair that is not designed to fully meet their ongoing health needs. Not having access to a proper wheelchair can actually lead to further injury to the individual, like developing sores that can result in long hospitalization stays. In the short term, it can mean not having a safe seating surface while you deal with the damage to your wheelchair or wait for a delayed wheelchair to be returned.

Of those who reported traveling with a wheelchair or scooter, almost 70 percent of respondents reported having experienced damage to their assistive device. Furthermore, almost 56 percent of passengers said that they had experienced delays in the return of their wheelchair or scooter. Also, 17 percent reported having their wheelchair or scooter lost and 28 percent reported losing an accessory such as a guard that protects the wheelchair user's clothing.

We asked respondents about whether they needed to use an aisle chair to board and deplane the aircraft. Over half of those who took the survey needed this type of assistance. Many reported that aisle chairs are difficult or unsafe to use. One passenger described the aisle chair as, "extremely awkward to sit in. My feet would not stay on the platform and would drag on the floor when they pulled me." Other passengers reported that personnel were not properly trained to assist them in using the aisle chair. Specifically, 16 percent of respondents reported being dropped and 23 percent reported being injured. One passenger said, "the attendants rarely know how to transfer or to strap me in."

Airlines often state that they would be able to properly assist passengers with disabilities if they would alert them prior to arrival at the airport that they will be traveling with a wheelchair or scooter and any type of assistance needed. In our survey, 83 percent of passengers said that they always alert the airline of their needs when they purchase their ticket. This leads us to believe that information provided by passengers too often does not get relayed to airline personnel and contractors for the day of travel.

The industry's recovery following the COVID pandemic has only escalated the number of incidents reported by PVA members. Since this spring, we have heard reports of insufficient staffing to perform lifts of passengers during the boarding and deplaning process, misplaced wheelchairs that result in injury and humiliation due to lack of bathroom access, broken wheelchairs, and even a threat to contact law enforcement if a PVA member refused to deplane before his wheelchair was available. These are not isolated incidents. 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 National President Charles Brown experienced while traveling by air. Sadly, indignant treatment is normal for PVA members and other individuals with mobility impairments.

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.

Passengers with disabilities who encounter disability-related problems in air travel often find that they have limited recourse. They may share their frustration on social media and file a complaint with the specific air carrier and/or the U.S. Department of Transportation (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 42,418 disability-related complaints as reported by 186 domestic and foreign air carriers, which represents an almost 15 percent increase over 2018. That same year, passengers filed 905 disability-related complaints directly with DOT. In 2021, the most recent year for which statistics are available, passengers filed 1,394 complaints with DOT.

Since December 2018, large domestic air carriers have been required to submit monthly reports on the number of wheelchairs and scooters they enplane and the number subsequently mishandled (lost, damaged, or delayed). In 2019, air carriers enplaned 685,792 wheelchairs and scooters and mishandled 10,548, a rate of 1.54 percent. In 2021, air carriers enplaned 532,306 and mishandled 7,239, a rate of 1.36 percent. Although the rate of mishandled wheelchairs may appear to be low, those affected are completely disenfranchised from their daily lives until their device has been repaired, located, or replaced. They might be forced to miss work, school, family obligations, social activities, medical appointments, or other activities of daily life. Or as in the case of disability advocate Engracia Figueroa be 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 flight.

The major problem with commercial air travel is that aircraft are required to have very few accessibility features to accommodate passengers with disabilities. Today, there are no wheelchair spaces on airplanes but that is not the case on Amtrak, buses, and subways. Instead, wheelchair users in commercial air travel must have their highly customized, expensive devices stowed for the flight. This leaves baggage handlers to figure out how to fit these devices into cargo holds not designed to receive or stow them. It also leaves the passengers who depend on assistive devices stressed and worried that their device will not be returned to them either in a usable condition or even perhaps at all.

Passengers will continue to be injured and wheelchairs delayed, damaged, or lost until travelers can stay safely seated in their devices. Commercial air travel, unlike other forms of mass transportation, has for too long been given special dispensation to be inaccessible. 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.

Until aircraft wheelchair spaces are available across the commercial air travel system, air carriers must improve training and provide job aid materials for workers. Areas of focus include wheelchair attendants who assist with transferring passengers with disabilities and handlers who are responsible for loading wheelchairs on and off the aircraft. DOT must also increase enforcement and assess penalties when violations occur.

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

In order to improve the current experience of passengers with disabilities, PVA submitted a request for rulemaking to DOT in February 2022. Our request asked DOT to address issues concerning 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 DOT to act on the petition during a public meeting the Department held in March 2022 in response to the plight of wheelchair users following Ms. Figueroa's death.

We believe the Department should 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. In addition, 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.

Additionally, 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.

Although we strongly support recent airline commitments⁵ to improve the experience of wheelchair users, we also strongly believe that the Department must move forward in promulgating new regulations to better protect wheelchair users. DOT has indicated that a proposed rule will be published in February 2023. We call on the Department to expeditiously address this rulemaking as 40 years of history have shown us that Department action is necessary to make industry-wide improvements.

For instance, PVA has long been involved in efforts to provide passengers with disabilities access to lavatories on single-aisle aircraft. The health consequences of not being able to access a lavatory inflight are significant. If lavatories are going to be made available on commercial aircraft, then they should as a matter of safety and dignity be accessible to all passengers.

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's January 2020 report on the accessibility of U.S. aircraft lavatories for people who have limited mobility found that although accessible lavatories are available, "carriers do not often choose to acquire them."⁶ Furthermore, of the top eight domestic airlines, only 4.5 percent had accessible lavatories on single-aisle aircraft. Four of those airlines had zero accessible lavatories.

⁵ Airlines for America, Airlines' Commitment to Accessibility, <https://www.airlines.org/accessibility/>.

⁶ 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>.

Despite years of delays, DOT finally published a notice of proposed rulemaking earlier this year that would require larger single-aisle aircraft to have an accessible lavatory. A passenger would be able to enter the lavatory using an onboard wheelchair with an assistant and close the door. The proposed timeline for implementation is quite lengthy. The requirement would apply to aircraft ordered 18 years after the date of the final rule or 20 years delivered. PVA was a member of the negotiated rulemaking committee in 2016⁷ that agreed to this timeline. We agreed to the lengthy time frame because it had already been 30 years since the passage of the ACAA and almost no steps had been taken to provide access to something as basic as a lavatory. We needed to have a time certain for access. Since air carriers have been on notice for the last six years that this requirement was coming, we believe that as a matter of equity DOT should shorten the implementation timeline to 12 years ordered, 14 years delivered. DOT has indicated that it plans to publish a final rule in spring 2023, meaning that even in a best-case scenario it will still be decades until the requirement is fully implemented.

In addition to lavatory access, the 2018 FAA Reauthorization included multiple provisions specifically focused on improving access to air travel for people with disabilities. Provisions included the creation of a committee to advise the DOT Secretary on issues of concern to passengers with disabilities, development of a passengers with disabilities bill of rights, implementation of a wheelchair data collection rule, and a requirement for a study to determine the feasibility of in-cabin wheelchair restraint systems. The 2018 Reauthorization also required DOT to review existing regulations related to timely, dignified, and effective assistance as well as those that govern pre-flight seat assignments and stowing of assistive devices.

In 2019, DOT Secretary Elaine Chao appointed the first ACAA Advisory Committee. The Committee, which included airline and airport representatives; wheelchair manufacturers; and veterans, disability, and service animal organizations met between March 2020 and September 2021. Its focus consisted of reviewing DOT's draft of the passengers with disabilities bill of rights and participation in one of three subcommittees: ticketing practices and seating accommodations, stowage of assistive devices, and assistance at airports and on aircraft and related training. The Committee's final report was submitted to DOT Secretary Pete Buttigieg earlier this year. The report focused on the recommendations related to the work of each Subcommittee and included those recommendations that could be agreed to by stakeholders. As a result, many of the recommendations reference the need for further study of the issues or adoption of best practices. PVA was honored to serve on the Committee and hopes it will be reauthorized.

In July 2022, DOT released the "Airline Passengers with Disabilities Bill of Rights." The Bill of Rights outlines ten fundamental rights of passengers with disabilities and the obligations of airlines and their contractors under the ACAA. It does not expand air carriers' ACAA obligations or establish new rights under the law. Some of the protections outlined in the Bill of Rights include the requirement for airlines to treat passengers with dignity

⁷ DOT first proposed conducting a negotiated rulemaking concerning accommodations for air travelers with disabilities regarding several issues, including accessible lavatories and inflight entertainment, in 2015. In May 2016, DOT established the Advisory Committee on Accessible Air Transportation to negotiate and develop a proposed rule. During the first meeting, and as noted in the Committee's Ground Rules, the Department informed the Advisory Committee that if it came to a consensus on the terms of the proposed rule, the Department "would act in good faith to issue a proposed rule that reflects those terms as closely as possible." In November 2016, the Committee came to an agreement that would increase access to inflight entertainment for passengers with disabilities. The most recent DOT significant rulemaking report provides no date for issuance of the inflight entertainment rule. We believe that the 2023 FAA Reauthorization Act should require DOT to promulgate this regulation within 60 days of enactment.

and respect and provide prompt, timely assistance using properly trained assistants. Airlines are required to train their personnel on the Bill of Rights and provide it to passengers who alert the airline of the need for disability-related assistance. PVA hopes it will both empower and educate air travelers with disabilities; thus, helping to hold airlines more accountable for ACAA compliance. It is too early to tell if it has had the intended effect but we are hopeful it will improve the air travel experience.

The 2018 FAA Reauthorization also required implementation of a DOT final rule on collection of data related to wheelchairs and scooters. As previously mentioned, beginning in December 2018, large domestic airlines were required to begin collecting and reporting to DOT the number of wheelchairs and scooters enplaned and subsequently mishandled (damaged, delayed, or lost). In the next FAA Reauthorization, we would like to see requirements for DOT to provide greater analysis and aggregation of the data, 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.

One of the 2018 Reauthorization provisions focused squarely on changing the future of air travel was a requirement for the U.S. Access Board to conduct a study to determine the feasibility of in-cabin wheelchair restraint systems. Many wheelchair users would like to be able to fly while seated in their personal wheelchairs. For some passengers, it is hoped that being able to stay in their wheelchairs would keep it from getting lost or damaged, prevent delays, and keep the passengers from injuries in the transfer process. Other wheelchair users require the support provided by their wheelchair and simply are not able to safely fly in a typical passenger seat.

The Access Board carried out the requirement to conduct the study through the National Academy of Sciences' Transportation Research Board (TRB). In September 2021, the Access Board held a public briefing on the study's results. Advocates were very excited to learn that the TRB study⁸ 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 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. In July 2022, on the anniversary of the Americans with Disabilities Act (ADA), DOT Secretary Buttigieg announced that the Department would take steps necessary to move toward an eventual rule that would allow passengers to fly while seated in their wheelchairs, which PVA strongly supports.

We call on Congress to include language in the next FAA Reauthorization directing appropriate agencies and administrations on completion of the next milestones and providing funding necessary to accomplish them. If the remaining issues are addressed in a way that does not call into question the technical feasibility of the

⁸ 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>.

concept, the 2023 FAA Reauthorization Act should also require DOT to promulgate regulations implementing requirements for in-cabin wheelchair securement. We would also support inclusion of tax credits or other incentives to facilitate expedited adoption by air carriers.

The disability-related provisions in the 2018 FAA Reauthorization Act represented an important step forward in efforts to improve the air travel experience of passengers with disabilities. However, these provisions alone simply will not address the fundamental access problems to safe air travel for people with disabilities. PVA urges Congress to make a strong, bold statement on the need to make systemic improvements in air travel that will improve disability access to air travel and improve enforcement.

Many of the difficulties that travelers with disabilities encounter in air travel are because the ACAA and its implementing regulations do not sufficiently provide for safe, dignified access. Specifically, the ACAA does not require aircraft to provide even basic accessibility for passengers with disabilities, particularly those who use wheelchairs. As a result, they often have no accessible path of travel on the aircraft to safely board and reach an airline seat and wheelchairs are loaded into aircraft cargo pits not designed to fit these highly complex assistive devices. Other modes of public transportation are covered by the ADA, which requires compliance with standards that accommodate passengers with disabilities. Thus, other forms of mass transportation in the United States are more accessible to people with disabilities, including those who use wheelchairs.

We strongly support the Air Carrier Access Amendments Act (ACAAA), H.R. 1696, which was introduced by Rep. Jim Langevin (D-RI). This legislation would greatly improve accessibility within air travel by making the following improvements:

- Ensure new airplanes are designed to accommodate the needs of people with disabilities by requiring airlines to meet defined accessibility standards. These standards will address safe and effective boarding and deplaning, visually accessible announcements, seating accommodations, and better stowage options for assistive devices; and
- Require removal of access barriers on existing airplanes to the extent that it is readily achievable, easily accomplishable, and may be done without much difficulty or expense.

We strongly believe that failure to include these changes in the next FAA Reauthorization will mean passengers with disabilities will continue to encounter barriers to air travel that make it extremely difficult to fly safely, particularly for those who use wheelchairs. It is time for air carriers to fully accommodate the needs of passengers with disabilities, including those who use wheelchairs. It is one of the few areas of sanctioned discrimination against a minority group in transportation. As the population ages, the need for greater accessibility in air travel will only continue to grow. All fare paying customers should be able to independently access aircraft without depending on unsafe, inefficient assistance. Only then will air travel truly be a viable option for all Americans.

The ACAA would also strengthen ACAA enforcement by requiring referral of certain passenger-filed complaints to the Department of Justice and establishment of a private right of action. The requirement for DOT to refer certain ACAA complaints to the Attorney General would appropriately 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 administrative remedies currently available provide little relief and have netted few improvements for passengers with disabilities. Establishing a private right of action would institute additional remedies, without removing DOT's role in the administrative process. It would also provide relief directly to passengers with disabilities. Furthermore, the private right of action would allow for injunctive relief to foster policy changes that would allow passengers and airlines to partner together to make changes that would benefit all passengers with disabilities.

We believe that increased aircraft accessibility, and improved enforcement options will lead to safer travel experiences for passengers with disabilities both now and in the future. In fact, nearly 10,000 messages have been sent to Congress urging passage of the ACAA. PVA members and other people 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 have "the will to do it."

It's also important to note that there is an important business case for improving access to air travel. Over 75 percent of all respondents from the survey referenced earlier said that if the air travel experience of passengers with disabilities improved they would fly at least a few times a year. Fifteen percent of respondents would even fly monthly. Thus, addressing air travel problems is not only required for equity it is also a smart business decision.

PVA thanks you for this opportunity to express our views. I would be happy to answer any questions.