

STATEMENT OF
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PARALYZED VETERANS OF AMERICA
BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON AVIATION
CONCERNING
THE AIRLINE PASSENGER EXPERIENCE: WHAT IT IS AND WHAT IT CAN BE

MARCH 3, 2020

Chairman Larsen, Ranking Member Graves, and members of the Subcommittee, Paralyzed Veterans of America (PVA) thanks you for the opportunity to testify about the experience of air travel passengers with disabilities and opportunities for reform. PVA is a congressionally-chartered veterans services organization serving the needs of veterans with spinal cord injuries and disorders. Nearly all of our members require the use of some type of assistive device, including manual and power wheelchairs, scooters, and canes, to increase their mobility and function; thus, ensuring greater independence in the mainstream of society.

Over 30 years ago, President Ronald Reagan signed the Air Carrier Access Act (ACAA) into law. The ACAA, which prohibits disability-based discrimination in air travel, was the result of 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, as amended, unless they received direct federal financial assistance. Subsequently, PVA led the charge on Capitol Hill to pass protections that would finally end discrimination against people with disabilities in air travel.

Prior to passage of the ACAA, people with disabilities were routinely forced to travel with an attendant at their own expense, even if they did not need assistance to fly

safely; required to sit on a blanket for fears that they might soil the passenger seat; or simply refused passage. The ACAA has provided passengers with disabilities improved consistency in air travel. Through this law, air carriers must provide passengers with disabilities the opportunity to preboard, if additional time or assistance is needed in boarding the aircraft; timely assistance in boarding and deplaning; proper stowage of assistive devices; and appropriate seating accommodations.

Although the ACAA led to improvements in the air travel experience for passengers with disabilities, the process is far from seamless and is, at times, dangerous. PVA members routinely report incurring bodily harm in boarding and deplaning aircraft, and their wheelchairs, particularly power wheelchairs, are often damaged while stowed. In addition, members have expressed difficulty in receiving appropriate seating accommodations on aircraft and often encounter air carrier personnel and contractors who are not appropriately trained in assisting passengers with catastrophic disabilities. As a result, some people with disabilities would rather drive long distances than risk personal injury or damage to their mobility devices.

Passengers with disabilities who encounter discrimination in air travel may file a complaint with the specific air carrier and U.S. Department of Transportation (DOT). In 2017, passengers filed 34,701 disability-related complaints as reported by 190 domestic and foreign air carriers, which represents a 6.5 percent increase over 2016. Top complaints with U.S. carriers for passengers with paraplegia or quadriplegia include failure to provide passenger assistance and appropriate seating accommodations. In 2019, passengers filed 905 disability-related complaints directly with DOT.

We believe most problems for our members in air travel result from lack of training, inaccessible aircraft, and inadequate enforcement of the law. Commercial air travel is the only mode of public transportation in which a wheelchair or scooter user must surrender their assistive device in order to travel. These passengers must rely on air carrier personnel and contractors to properly stow their devices and help them board and deplane the aircraft. For many PVA members, this is where the problems in safely accessing air travel truly begin.

During the preboarding process, I travel to the bottom of the jetway in my customized wheelchair. It is on this sloped area that I transfer from my personal wheelchair into an aisle chair, which is a small, narrow wheelchair. This device has no means of self-propulsion. Some individuals are able to perform the transfer independently, others need the assistance of air carrier personnel. Air carriers use several different types of aisle chairs to assist passengers with mobility impairments during the boarding process. Often these aisle chairs are poorly designed and in disrepair. In some cases, the aisle chair can cause harm because it does not have proper padding, which can lead to skin abrasions, bruises, or sores.

The assistance from personnel in trying to coordinate the transfer and the slope of the jetway can make this a precarious procedure. In our experience, air carrier personnel and contractors are not properly trained on how to physically lift / transfer a person from

a wheelchair to an aisle chair. They are also too often unfamiliar with the securement straps. Once securing the passenger, assistants must traverse the aisle chair backwards into the plane, down the narrow aisle, and then transfer the passenger from the aisle chair into the passenger seat.

Upon entering the plane, accessibility diminishes rapidly. The aisle width of the plane is typically smaller than that of the individual being transported on the aisle chair. This means that passengers are bumped and scraped from row to row to get to their seat, wherever that might be on the aircraft. Despite requirements for disbursed removable armrests to facilitate transfers, aircraft consistently have fixed arm rests in first and business classes of service, making the process more difficult.

On my most recent flight, in December 2019, I encountered a recurring problem with the aisle chair and the personnel who came to assist me. Specifically, when I was boarding and upon my return deplaning at the same airport, the aisle chair that was used did not accommodate my needs. The foot rest was too small and my feet kept falling off the aisle chair as I was being brought into and out of the airplane. Also, the seat straps were not sufficient to keep me in a secure seated position. As a result, my hip and lower backside hit every armrest all the way back to my assigned seat. At my seat, the personnel tried to lift me up over the fixed armrest and into my seat but they were not strong enough. This resulted in my being dropped onto the armrest as I slid into the seat.

People with disabilities are sometimes deplaned without the benefit of even an aisle chair or other mechanical device. In October 2019, a PVA member was hand-carried off of an airplane. Although there was no emergency requiring it, she was informed that allowing individuals to carry her off was the only way for her to deplane. She reluctantly agreed even though she expressed her discomfort with the process. While she was being carried from the aircraft, she was afraid that they would drop her and could feel the struggle of those attempting to assist her. Current regulations should have prevented her from enduring this treatment, but they did not.

Once I am preboarded, the rest of the passengers enter the plane. Those that are seated in my row, have to climb over me if I am seated in the middle or aisle seat. This causes further discomfort and aggravation to myself and others. Upon getting to my destination, the deplaning process is similar to the boarding process. I am the last person off the plane no matter if it is my connector city or final destination. Sometimes, the aisle chair is delayed.

In addition to the difficulties that passengers with limited mobility face in boarding the plane, they must also worry about the stowage of their assistive devices. Damage to a wheelchair can be a trip altering event as well as pose significant health concerns for the passenger who depends on it for mobility. Customized wheelchairs are not easily replaced if damaged.

Upon exiting the aircraft, air carrier personnel deliver my manual wheelchair to the bottom of the jetway where I transfer to it from the aisle chair. I am fortunate that my wheelchair is typically returned to me in the condition it was surrendered. Unfortunately, this is not the case for some of our members, particularly those who use power wheelchairs. Damage to assistive devices is typically a result of improper loading and securement within the cargo area of the aircraft. Damage ranges from minor tears in fabric upholstery to a complete electrical power break down rendering the chair useless to the operator. The air carriers are responsible for the repair of broken wheelchairs, but repairs are not done immediately, leaving the passenger stranded until it can be fixed. Even if the individual is provided with a loaner wheelchair, it is not the same as the individual's customized wheelchair.

As part of the 2018 FAA Reauthorization Act (Public Law 115-254), large domestic air carriers are required to submit monthly reports on the number of wheelchairs and scooters they enplane and the number that are mishandled. In December 2019, reporting air carriers reported enplaning 65,345 wheelchairs and scooters and mishandling 1,001, a rate of 1.53 percent mishandled. For the entire calendar year of 2019, air carriers reported checking 685,792 wheelchairs and scooters and mishandling 10,548, a rate of 1.54 percent mishandled. Although the percentage of mishandled wheelchairs is low, those affected are completely disenfranchised from their daily lives until it has been repaired. They might be forced to miss work, school, social activities, medical appointments, or other activities of daily living.

Due to the many problems that can occur as part of boarding and deplaning an aircraft, PVA supported a requirement in Section 432 of the FAA Reauthorization Act for the U.S. Access Board to conduct a study to determine the feasibility of in-cabin wheelchair restraint systems. The Access Board is carrying out the study through the National Academy of Sciences' Transportation Research Board. PVA members Peter W. Axelson and Dr. Rory A. Cooper were appointed to the study committee. If the study determines that flying in a wheelchair is feasible, we call on Congress to mandate that DOT develop regulations implementing such a requirement in commercial air travel, which would bring air travel up to the standards found in other modes of public transportation.

In addition to problems with boarding and deplaning, aircraft have limited accessibility. At the end of a long flight, my first stop once I leave the jetway is the airport restroom. Once I board the aircraft, I lose the ability to use a restroom because the vast majority of single-aisle aircraft do not have one that is accessible. A January 2020 Government Accountability Office 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."¹

¹ 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>.

In 2016, DOT's Accessible Air Transportation (ACCESS) Advisory Committee conducted a negotiated rulemaking that addressed whether to require accessible lavatories on single-aisle aircraft of a certain size.² In order to assist the committee, PVA conducted a survey of disability stakeholders to determine what their expectations would be for an accessible lavatory on new single-aisle aircraft. The survey included seven questions and netted nearly 950 responses. One of the questions asked respondents whether or not the inability to use a lavatory was sufficient reason not to fly. With a 99 percent response rate, 67 percent of those responding said that the inability to access a lavatory would be reason enough for them to avoid air travel.

After six months of negotiations, the ACCESS Committee voted on October 14, 2016, to approve a set of terms that when fully implemented would require accessible lavatories on single-aisle aircraft with 125 Federal Aviation Administration (FAA) maximum certified passenger seats.³ Despite agreement of the committee members and DOT on a proposal that would ultimately require fully accessible lavatories on single-aisle aircraft, the Department has yet to move forward with publishing a notice of proposed rulemaking on such a requirement. This is extremely disappointing and a failure of the regulatory process if the agreement of the regulated entity and the beneficiary is not sufficient to propel forward a process that has already been decades in the making.

When passengers with disabilities encounter disability discrimination, they are left with few remedies. The administrative remedies available through DOT are quite limited. The Department can issue cease and desist orders. DOT can also 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.

Any remedy for the passenger must come from the carrier and is typically limited to bonus miles or gift cards. I filed a complaint with regard to the improper transfer that I encountered last December. The carrier determined that the ACAA was violated and provided me with 10,000 bonus miles. Systemic change is what is needed, not more miles.

The experience of our members and other passengers with disabilities in boarding and deplaning aircraft and the general inaccessibility of commercial passenger aircraft have compelled PVA to lead the charge to improve the air travel experience of veterans and all people with disabilities. We appreciated the opportunity to work with the House Transportation and Infrastructure Committee on the FAA Reauthorization Act of 2018.

² Nondiscrimination on the Basis of Disability in Air Travel; Establishment of a Negotiated Rulemaking Committee, 81 Fed. Reg. 20,265, (Apr. 7, 2016)

<https://www.federalregister.gov/documents/2016/04/07/2016-08062/nondiscrimination-on-the-basis-of-disability-in-air-travel-establishment-of-a-negotiated-rulemaking>.

³ U.S. Department of Transportation, Resolution of the U.S. Department of Transportation Access Committee, Nov. 22, 2016,

<https://www.transportation.gov/sites/dot.gov/files/docs/ACCESS%20Committee%20Final%20Resolution.1.21.16.pdf>.

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

We also appreciated the opportunity to appear before the Subcommittee during last September's FAA oversight hearing to highlight the provisions related to the experience of passengers with disabilities in air travel.

The FAA Reauthorization of 2018 included 11 provisions focused solely on improving the air travel experience of passengers with disabilities. In addition to those already discussed, were provisions that will inform air travel passengers about their rights under the ACAA, improve the assistance they receive from air carriers, and establish formal lines of communication between the air travel industry, the disability community, and DOT to address barriers to air travel. As a result of these provisions, we are particularly pleased to note that PVA will be represented on the recently announced Air Carrier Access Act Advisory Committee required under Section 439.

One of the provisions in the FAA Reauthorization that we believe could address the systemic training problems is the requirement in Section 440 for the Secretary to perform a review, and as necessary, to revise the regulations governing timely, dignified, and effective assistance for passengers with disabilities. The Secretary was also required to determine whether the regulations governing training programs for assisting passengers, like paralyzed veterans, are sufficient and whether hands on training should be part of the required regular training regimen. We understand that the advisory committee will be reviewing this requirement and ask that the Subcommittee conduct appropriate oversight of this requirement to ensure that DOT takes the current training deficiencies seriously as they are a health and safety issue for PVA members and other passengers with disabilities.

The disability-related provisions in the FAA Reauthorization Act and the study on lavatory access also included in the law represent an important step forward in efforts to improve the air travel experience of passengers with disabilities. However, these provisions alone will not address the fundamental access problems to safe air travel for people with disabilities. Thus, we strongly support the bipartisan Air Carrier Access Amendments Act, H.R. 1549, which was introduced in March 2019 by Rep. Jim Langevin (D-RI). This legislation would greatly improve accessibility within aircraft and strengthen enforcement of the ACAA.

The Air Carrier Access Amendments Act would ensure new airplanes are designed to accommodate the needs of people with disabilities by requiring airlines to meet defined accessibility standards. These standards would address safe and effective boarding and deplaning, visually accessible announcements, seating accommodations, lavatories, and better stowage options for assistive devices. The legislation would also 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 see no reason why these concepts, which are mainly drawn from the Americans with Disabilities Act (ADA), would not successfully translate to air travel.

Unlike the ADA, the ACAA does not impose specific physical access requirements for aircraft. Because of the ADA and other disability civil rights laws, other forms of mass

transportation in the United States are accessible to people with disabilities, including those who use wheelchairs. Meanwhile, the interior of most commercial passenger aircraft are quite hostile to passengers who use wheelchairs. There is not an accessible path of travel to safely board and reach an airline seat; lavatories are inaccessible; and limited personal space typically means passengers crawling over their fellow passengers who are unable to stand up and move.

We believe that it is time for aircraft to 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 aircraft 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 members of the flying public.

H.R. 1549 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.

Equally important, the law would establish the right of passengers with disabilities to seek relief in the courts for ACAA violations. Unlike laws governing access for people with disabilities in other forms of transportation, the ACAA does not explicitly allow people with disabilities to enforce their civil rights, if needed, in a court of law. Prior to 2001, some courts⁵ had held that the ACAA allowed for a private right of action. Following the U.S. Supreme Court's decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001),⁶ however, the Second,⁷ Fifth,⁸ Ninth,⁹ Tenth,¹⁰ and Eleventh¹¹ U.S. Courts of Appeals have ruled that there is no private right of action under the ACAA. At its recent midyear meeting, the American Bar Association adopted a resolution supporting a private right of action under the ACAA.¹² We also believe that Congress must act to restore this right to paralyzed veterans and all passengers with disabilities.

⁵ The U.S. Courts of Appeals for the Fifth and Eighth Circuits had previously ruled that there is a private right of action under the ACAA. *Shinault v. American Airlines, Inc.*, 936 F.2d 796 (5th Cir. 1991) and *Tallarico v. Trans World Airlines, Inc.*, 881 F.2d 566 (8th Cir. 1989).

⁶ In *Sandoval*, the Court held that a private right of action should not be implied absent obvious congressional intent.

⁷ *Lopez v. Jet Blue Airways*, 662 F.3d 593 (2d Cir. 2011).

⁸ *Stokes v. Southwest Airlines*, 887 F.3d 199 (5th Cir. 2018).

⁹ *Segalman v. Southwest Airlines Company*, 895 F.3d 1219 (9th Cir. 2018).

¹⁰ *Boswell v. Skywest Airlines, Inc.*, 361 F.3d 1263 (10th Cir. 2004).

¹¹ *Love v. Delta Airlines*, 310 F.3d 1347 (11th Cir. 2002).

¹² Amanda Robert, Air Travelers Should Have a Private Right of Action if Discriminations Against, ABA House Says, ABA Journal, Feb. 17, 2020, <http://www.abajournal.com/news/article/resolution-106>.

The administrative remedies currently available provide little relief and have netted few in improvements in air travel 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 better training of airline personnel and their contractors, increased aircraft accessibility, and improved enforcement options will lead to safer travel experiences for passengers with disabilities. PVA members and other people with disabilities have waited long enough for true access to air travel. The future has arrived, and we know what the process can be like for passengers with disabilities. We simply need to have the will to do it.

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

Information Required by Rule XI 2(g) of the House of Representatives

Pursuant to Rule XI 2(g) of the House of Representatives, the following information is provided regarding federal grants and contracts.

Fiscal Year 2020

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events
— Grant to support rehabilitation sports activities — \$253,337.

Fiscal Year 2019

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events
— Grant to support rehabilitation sports activities — \$193,247.

Fiscal Year 2018

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events
— Grant to support rehabilitation sports activities — \$181,000.

Disclosure of Foreign Payments

Paralyzed Veterans of America is largely supported by donations from the general public. However, in some very rare cases we receive direct donations from foreign nationals. In addition, we receive funding from corporations and foundations which in some cases are U.S. subsidiaries of non-U.S. companies.

Lee Page, Senior Associate Advocacy Director, Paralyzed Veterans of America

Lee Page joined the Advocacy Program of the Paralyzed Veterans of America (PVA) in January 1990. In his role as Senior Associate Director, he works to ensure the rights of people with disabilities by advocating for the removal of regulatory and discriminatory barriers, through interaction with the Congress, the Administration, federal agencies, with other disability organizations, private business and the general public.

Lee works with the Consortium for Citizens with Disabilities (CCD) and is a co-chair of the Transportation Task Force. He was a founding member of the ITEM Coalition to ensure health insurance coverage of durable medical equipment and complex rehabilitative technology in Medicare and Medicaid. In 2016 was appointed to the Department of Transportation's Advisory Committee on Accessible Air Transportation (ACCESS Advisory Committee).

Before coming to PVA, Lee was a Consumer Credit Accounts Manager for NationsBank in Greensboro, North Carolina. Lee is a graduate of Wofford College with a Bachelor's of Arts in Political Science. He currently resides in Falls Church, Virginia.