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Chartered by the Congress of the United States

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The Honorable Frank LoBiondo
Chairman
House Transportation and Infrastructure Committee
Subcommittee on Aviation
Washington, DC 20515

The Honorable Rick Larsen
Ranking Member
House Transportation and Infrastructure Committee
Subcommittee on Aviation
Washington, DC 20515

Dear Chairman LoBiondo and Ranking Member Larsen:

Paralyzed Veterans of America and the undersigned allied organizations respectfully request to submit this letter for the record of the March 8, 2017, House Transportation and Infrastructure Committee, Subcommittee on Aviation hearing, "Building a 21st Century Infrastructure for America: Air Transportation in the United States in the 21st Century." As organizations focused on promoting the rights of people living with disabilities, we are very concerned about the problems routinely encountered by passengers with disabilities in air travel.

Protections in air travel for people with disabilities began in earnest with the passage of the Air Carrier Access Act (ACAA). The ACAA, which prohibits disability-based discrimination in air travel, was the result of a U.S. Supreme Court decision in *Department of Transportation vs. 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. As a result of this decision, Paralyzed Veterans and the disability community advocated for the passage of a statute that would end discrimination against people with disabilities in air travel.

The ACAA is a civil rights law that protects not only the rights of veterans with catastrophic disabilities, but also the rights of all individuals who are living with disabilities to access air travel. The rights granted through the ACAA include the opportunity to preboard, if additional time or assistance is required in boarding the aircraft; timely assistance in boarding and deplaning from trained air carrier and contract personnel; accessible in-flight communications; stowage of assistive devices; and seating accommodations. These protections have provided passengers with disabilities more consistency in air travel and increased access.

Despite progress in improving access for passengers with disabilities, however, disability-related problems in air travel persist. Passengers with mobility impairments routinely incur bodily harm in boarding and deplaning aircraft and damage to their assistive devices. Many of these individuals, along with passengers with other types of disabilities, find it difficult to receive appropriate seating accommodations and encounter air carrier personnel and contractors who

are not appropriately trained in assisting passengers with disabilities. Ineffective communications and assistance to passengers with disabilities lead to still more problems. As a result of these difficulties, many members of Paralyzed Veterans and other individuals with catastrophic disabilities choose to drive long distances over attempting to navigate the air travel process.

The problems that passengers with disabilities encounter in air travel have profound consequences. For example, in the March 2016 issue of Paralyzed Veterans' PN Magazine, Paralyzed Veterans of America Gateway Chapter President Stan Brown recounted a 2009 air travel incident that resulted in a visit to the emergency room. The incident reflects the problems that occur when air carriers and their contractors do not listen to passengers with disabilities:

“They started to unstrap my top from the aisle chair. I've got no control, and they don't understand that I kept saying, 'Don't do that. I'll fall out.' They did it anyway, and I tumbled out of the chair right in the front of the plane.”—Stan Brown¹

Fortunately, Mr. Brown did not sustain major injuries from the fall.

The consequences of air travel problems are of course not unique to people who use wheelchairs. People who are deaf, blind, autistic, and those with other disabilities also have trouble accessing needed accommodations. Not receiving proper guide assistance or announcements can mean missed flights and opportunities.

Passengers with disabilities who have disability-related problems may file complaints directly with air carriers. In 2015, passengers filed 30,830 such complaints as reported by 176 domestic and foreign air carriers.² This represents a nearly twelve percent increase over 2014 despite a 4.75 percent increase in enplanements.³ U.S. air carriers account for the vast majority of disability-related complaints filed (26,401).⁴ Top complaints received by U.S. air carriers include failure to provide assistance, seating accommodations, and service animals.⁵

In addition, passengers with disabilities may file disability-related complaints with the Department of Transportation (DOT). In 2016, DOT reported receiving 862 complaints related to disability.⁶ The number of complaints filed with DOT represents a decrease of nearly 80 complaints from the previous year.⁷

Passengers filing complaints with DOT may use either a formal or informal complaint process. Under the ACAA, DOT must investigate all complaints received. The remedies available from DOT do not allow for passengers to receive monetary damages or other relief. DOT can issue cease and desist orders and civil fines. However, civil fines are rarely invoked and typically only

¹ Jennifer Best, *Security Rules*, PN, March 2016, at 26, 29.

² Department of Transportation, Annual Report on Disability-Related Air Travel Complaints Received During Calendar Year 2015, <https://www.transportation.gov/sites/dot.gov/files/docs/2015%20Summary%20Report.pdf>.

³ *Id.*

⁴ *Id.*

⁵ Department of Transportation, 2015 Summary Totals for US Carriers (Appendix B), <https://www.transportation.gov/sites/dot.gov/files/docs/2015%20Summary%20Totals%20for%20US%20Carriers.pdf>.

⁶ Department of Transportation, Air Travel Consumer Report (Feb. 2017), <https://www.transportation.gov/sites/dot.gov/files/docs/2017FebruaryATCR.pdf>.

⁷ *Id.*

in cases involving a pattern or practice of discrimination. Unlike most civil rights laws, the ACAA lacks a guaranteed private right of action. Consequently, people with disabilities typically receive little, if any, redress to their grievances.

Access for people with disabilities in air travel must move into the 21st century. Without safe and effective access to air travel, people with disabilities will be left behind unable to compete in today's job market or enjoy the opportunities available to other Americans. They will also be unable to receive needed health care, travel for recreation, and visit family members in the same manner as other Americans.

Since the passage of the ACAA, Paralyzed Veterans and the allied organizations have worked diligently to improve access for passengers with disabilities. In 2016, we focused specifically on educating members of Congress about the ACAA and the need for reform. Thus, we were pleased that disability-related provisions were included in both the House and Senate versions of the FAA Reauthorization in the 114th Congress.

The House version of the reauthorization, the Aviation Innovation, Reform, and Reauthorization Act of 2016 (H.R. 4441), included a requirement for DOT to move ahead with issuing pending regulations, including those governing access to lavatories on single-aisle aircraft, the definition of a service animal, and seating accommodations. The Senate version of the reauthorization, the Federal Aviation Administration Reauthorization Act of 2016 (S. 2658), included four provisions directly aimed at the concerns of passengers with disabilities. The first provision involved a requirement for the Government Accountability Office (GAO) to review ACAA training policies. The second provision involved dissemination of best practices to improve airport accessibility. The third provision addressed the feasibility of in cabin wheelchair restraint systems. The last provision concerned the establishment of a DOT advisory committee on the air travel needs of passengers with disabilities.

Although attempts to pass a long-term FAA reauthorization stalled, we were pleased that the FAA Extension, Safety, and Security Act of 2016 (Public Law 114-190) included two disability-related provisions. Specifically, Section 2107 required GAO to submit a report to Congress about air carrier personnel and contractor training programs, including variations among policies between air carriers, how frequently since 2005 DOT has requested corrective action following reviewing a training policy, and the actions taken in response. After the report is issued, DOT must develop and disseminate best practices that will improve training. We are pleased that GAO is currently engaged in completing this requirement and has consulted with disability stakeholders regarding its efforts.

Section 2108 of the FAA Extension requires DOT to issue a Supplemental Notice of Proposed Rulemaking for certain pending ACAA regulations by July 2017. These regulations include whether accessible lavatories should be required on single-aisle aircraft of a certain size, seating accommodations, and service animals. This requirement is quite important in light of the results of a negotiated rulemaking conducted by DOT in 2016.

In May 2016, DOT convened the Advisory Committee on Accessible Air Transportation (ACCESS Advisory Committee) to conduct a negotiated rulemaking.⁸ The disability community was represented by a diverse group of organizations including Paralyzed Veterans, American Council of the Blind, National Association of the Deaf, National Council on Independent Living, National Disability Rights Network, and National Federation of the Blind. The issues included in

⁸ ACCESS Advisory Committee, <https://www.transportation.gov/access-advisory-committee>.

the negotiation involved in-flight entertainment and communications, accessible lavatories on single-aisle aircraft, and the definition of a service animal.

After seven months of negotiations between air carriers, original equipment manufacturers, the disability community, researchers, and other allied groups, a consensus was reached on access to lavatories on single-aisle aircraft and in-flight entertainment. We expect DOT will move forward in issuing regulations in line with these agreements, later this year. We also expect DOT will issue proposed rules governing the remaining issues covered by Section 2108 of Public Law 114-190.

These regulations, along with other current and pending ACAA regulations, are vital to the health and safety of veterans and other passengers with disabilities. We were dismayed by DOT's recent decision to allow a one-year delay in the requirement for domestic air carriers to report the number of wheelchairs and scooters enplaned and deplaned on their aircraft.⁹ Under the rule, air carriers will also be required to report the number of assistive devices that were "mishandled." This decision was made without a formal request for stakeholder comment on the delay.

As noted by Mr. Charles Brown, Paralyzed Veterans National Vice President, in the October 2016 edition of PN magazine, an airline's "mishandling" of a wheelchair is a very serious incident that may lead to missed opportunities and potentially bodily harm.¹⁰ People with catastrophic disabilities like Mr. Brown use customized wheelchairs that account for their specific needs. The loss of use of these devices leaves their users vulnerable and limits their independence.

In addition to moving forward with and protecting vital ACAA regulations, passengers with disabilities need Congress to act to improve the ACAA and the air travel process. The need to reauthorize the FAA this year provides Congress with this critical opportunity. As a starting point, we believe that the remaining provisions included in S. 2658 should be part of the House's 2017 FAA Reauthorization. These provisions which address airport accessibility, the feasibility of in-cabin wheelchair restraints, and the creation of an advisory committee addressing the experience of passengers with disabilities are common-sense measures to improve air travel for people with disabilities.

We further believe that additional provisions should be included in the House's FAA Reauthorization that would advance access for passengers with disabilities. Specifically, we propose harmonizing aspects of the ACAA statute with definitions and protections included in the Americans with Disabilities Act (ADA), as amended. This includes the definition of disability and prohibited discriminatory actions.

One of the most important changes needed to the ACAA statute concerns enforcement of its civil rights protections. The statute must be amended to require DOT to refer alleged violations that are matters of general importance to the Department of Justice. Furthermore, the statute must be amended to include a private right of action.

⁹ Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transported in Aircraft Cargo Compartments; Extension of Compliance Date, 82 Fed. Reg. 14,437 (Mar. 21, 2017).

¹⁰ Charles Brown, *Missing a Golden Opportunity*, PN, October 2016, at 28, 29.

Unlike other civil rights laws, including section 504 of the Rehabilitation Act of 1973, as amended, and the ADA, the ACAA does not explicitly allow people with disabilities to enforce their civil rights via the court system, if needed. Prior to 2001, some courts 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),¹¹ however, the Second,¹² Tenth,¹³ and Eleventh¹⁴ Circuits have ruled that there is no private right of action under the ACAA. Passengers with disabilities must seek remedies, if any, that may be available under state law.

In addition, we support improving accessibility within aircraft for people with disabilities. Unlike other forms of transportation, aircraft have few accessibility features for people with disabilities, including those who are deaf, blind, or have cognitive or mobility impairments. Even if a person with a disability is able to choose a seat that best meets his or needs, neither the seat nor the path to reach the seat meet any accessibility standards, other than a requirement for lowering of armrests on some seats.

In order for a person with a permanent disability such as a spinal cord injury to board or deplane an aircraft, he or she has to be transferred from his or her customized wheelchair to an aisle chair prior to entering the aircraft. The passenger is then maneuvered backwards onto the aircraft and pulled down the aisle to his or her seat. Within the confines of the cabin, the individual is then transferred to an aircraft passenger seat, where he or she will most likely remain until the process is repeated when the individual departs the aircraft.

Until such time as aircraft are fully accessible and passengers with disabilities are able to travel by air without any more difficulty than any other passenger, we must improve the assistance and service they receive. Thus, we propose a requirement for hands on training for personnel who provide physical assistance in moving passengers with disabilities. This specifically includes personnel who are assisting in transfers to aisle chairs and aircraft passenger seats. We also support increased civil fines for damage to wheelchairs or other mobility aids or injury to passengers.

We believe that all passengers with disabilities have the right to a dignified air travel experience. Thus, we propose that the Secretary of Transportation establish an Airline Passengers with Disabilities Bill of Rights using plain language to describe the basic rights and responsibilities of air carriers, their contractors, and people with disabilities under the ACAA. These rights should be transmitted to passengers who self-identify as a person with a disability and should be widely available from air carriers. Their personnel and contractors must also be trained on these rights, which are unique to the experience of passengers with disabilities.

While individuals who travel by air may be concerned about flight delays, lost luggage, or cramped seats, people with disabilities likely have all of these concerns plus many more. Will my wheelchair be broken when I arrive? Will I be injured trying to get off of the aircraft? Will I be informed of gate changes? Will I be left alone without needed assistance? As a nation, we have made a lot of progress in improving the air travel experience for passengers with disabilities, but these real questions are important reminders that more remains to be done.

¹¹ In *Sandoval*, the Court held that a private right of action should not be implied absent obvious congressional intent.

¹² *Lopez v. Jet Blue Airways*, 662 F.3d 593 (2d Cir. 2011).

¹³ *Boswell v. Skywest Airlines, Inc.*, 361 F.3d 1263 (10th Cir. 2004).

¹⁴ *Love v. Delta Airlines*, 310 F.3d 1347 (11th Cir. 2002).

We appreciate the opportunity to submit these comments for the record. We stand ready to work with the committee to improve air travel for people with disabilities. If you have any questions, please contact Heather Ansley, Associate General Counsel for Corporate and Government Relations, at 202-416-7794 or by email at heathera@pva.org.

Respectfully,

Paralyzed Veterans of America

Allied Organizations:

American Council of the Blind
Bazelon Center for Mental Health Law
Disability Rights Education & Defense Fund
Easterseals
National Council on Independent Living
National Disability Rights Network
National Multiple Sclerosis Society
United Spinal Association