No. 25-60071

In the United States Court of Appeals
for the Fifth Circuit

Airlines for America; American Airlines, Incorporated; Delta Air Lines, Incorporated; JetBlue Airways Corporation; Southwest Airlines Company; United Airlines, Incorporated,

Petitioners,

v.

United States Department of Transportation,

Respondent.

On Petition for Review of a Final Rule of the
United States Department of Transportation

MOTION OF PARALYZED VETERANS OF AMERICA FOR LEAVE TO INTERVENE

Robin Thurston
DEMOCRACY FORWARD FOUNDATION
P.O. Box 34553
Washington, D.C. 20043
(202) 894-6035
rthurston@democracyforward.org

Alessandra B. Markano-Stark
Stephen F. Hayes
RELMAN COLFAX PLLC
1225 19th St. NW, Suite 600
Washington, D.C. 20036
(202) 728-1888
amarkano-stark@relmanlaw.com

Counsel for Intervenor

CERTIFICATE OF INTERESTED PERSONS

No. 25-60071, Airlines for America, et al. v. U.S. Department of Transportation

The undersigned counsel of record certifies that, in addition to those already listed in those briefs already filed by the parties, the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Intervenor: Intervenor Paralyzed Veterans of America (PVA) is a non-profit, congressionally chartered veterans service organization. Pursuant to Fed. R. App. P. 26.1, it has no parent corporation, and does not issue stock.

Counsel: Counsel for Intervenor are Alessandra B. Markano-Stark and Stephen F. Hayes of Relman Colfax PLLC, and Robin Thurston of Democracy Forward Foundation.

Dated: March 20, 2025

Respectfully submitted,

/s/ Alessandra B. Markano-Stark
Alessandra B. Markano-Stark
Counsel for Intervenor

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

The Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, prohibits discrimination against individuals with disabilities in air transportation. Effective implementation and enforcement of the ACAA requires the Department of Transportation (DOT) to promulgate rules to regulate air carrier activity. *See* ACAA, Pub. L. No. 99-435, § 3, 100 Stat. 1080, 1080 (1986).

Paralyzed Veterans of America (PVA) is a congressionally chartered veterans service organization whose members are honorably discharged veterans with spinal cord injuries and/or disease. Decl. of Robert L. Thomas, Jr. (Mar. 20, 2025) ("Decl.") (attached as Ex. 1), ¶¶ 2, 3. PVA petitioned DOT in 2022 to initiate a rulemaking under the ACAA "to implement standards and requirements for boarding and deplaning airline passengers with mobility disabilities, in accordance with the mandate by Congress." PVA Petition for Rulemaking (Feb. 15, 2022), Decl., Ex. 1, Attach. A at 1("PVA Petition"); Decl. ¶ 10. DOT did so, ultimately promulgating *Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs*, 89 Fed. Reg. 102,398 (Dec. 17, 2024) (codified at 14 C.F.R. pt. 382) ("Safe Accommodations Rule"), late last year, under the prior presidential administration.

Petitioners, who are airlines and an airline industry organization, now challenge the Safe Accommodations Rule "in whole or in part." Doc. No. 1-2, at 5.

Pursuant to Federal Rule of Appellate Procedure 15(d), PVA respectfully moves for leave to intervene to protect its interests and those of its disabled veteran members. The Rule embodies significant protections for which PVA has long advocated, that are at the heart of its mission and that directly and significantly affect both PVA's work and the lives of its members, who have long faced discriminatory and unsafe air travel conditions.

When determining whether intervention under Rule 15(d) is appropriate, this Court considers two factors: "first, the statutory design of the act and second, the policies underlying intervention in the trial courts pursuant to Fed.R.Civ.P. 24." *Texas v. U.S. Dep't of Energy*, 754 F.2d 550, 551 (5th Cir. 1985). The statutory designs of the ACAA and the FAA Reauthorization Act of 2024 (which called for further rulemaking to protect the interests of passengers with disabilities) support PVA's intervention because both envisage an active role for organizations like PVA, and because the applicable judicial review provision is consistent with intervention. Similarly, the Rule 24(a)(2) factors support intervention:

(1) This motion is filed 30 days after the petition for review was docketed and intervention would not prejudice either party, and therefore is timely;

(2) PVA has a legally protectable interest relating to the subject of this action, namely, the implementation of a rule that it expended significant resources to help design and that directly benefits its members by reducing physical and financial harm to them;

(3) An unfavorable resolution of this matter would impair and impede PVA's interests by requiring it to devote additional time and resources in

subsequent rulemaking procedures and by denying its members the protection of the Rule; and

(4) because of the particularity of PVA's interests, no party to the case adequately represents PVA's interests.

Counsel for intervenors have conferred with counsel for Petitioners and for DOT. Petitioners do not oppose this motion. DOT takes no position on the motion at this time, but has reserved the right to oppose the motion in the future.

BACKGROUND

PVA is a congressionally chartered veterans service organization. *See* 36 U.S.C. §§ 170101–170111. PVA was founded in 1946. Decl. ¶ 3. Since its founding, PVA's mission has been to change lives and build brighter futures for seriously injured and ill veterans by empowering them to regain their freedom and independence. *Id.* PVA has over 15,000 members. Decl. ¶ 8.

PVA advocates for opportunities that maximize the independence of its veteran members and for their civil rights. Decl. ¶ 3. Thousands of service members and veterans sustain spinal cord injuries or are diagnosed with spinal cord diseases every year, resulting in a loss of motor skills and/or sensory function, including paralysis. Decl. ¶ 7. These disabled veterans face significant barriers to accessing public spaces, including in air travel. Decl. ¶ 9.

For decades, PVA has advocated for appropriate, nondiscriminatory accommodations for disabled travelers, including those using wheelchairs. Decl. ¶ 3.

When the Supreme Court held that Section 504 of the Rehabilitation Act of 1973 does not apply to air carriers, *see U.S. Dep't of Transp. v. Paralyzed Veterans of Am.*, 477 U.S. 597, 597 (1986), PVA led advocacy efforts to pass the ACAA to prohibit discrimination by air carriers against individuals with disabilities. *See* 55 Fed. Reg. 8008, 8009 (Mar. 6, 1990) (describing the legislative history of 14 C.F.R. Part 382 and the impetus for the enactment of the ACAA); Decl. ¶ 4.

Despite the ACAA's protections, the air travel experience for passengers with disabilities, particularly wheelchair users, remains frustrating, discriminatory, and unsafe. Members have been dropped by airline employees or contractors and injured when being assisted using airlines' aisle chairs, their wheelchairs have been damaged and rendered inoperable, and they have suffered numerous other harms and indignities. Decl. ¶¶ 12–17. Some Americans with disabilities, including injured veterans who are members of PVA, have decided that they will no longer travel by air. Decl. ¶ 14.

Recognizing that the congressional mandate of the ACAA has not been effectively implemented or enforced, in the FAA Reauthorization Act of 2018, Congress specifically directed DOT to "review, and if necessary revise" its regulations "to ensure that passengers with disabilities who request assistance while traveling in air transportation receive dignified, timely, and effective assistance at airports and on aircraft from trained personnel." Pub. L. No. 115-257, § 440, 132

Stat. 3186, 3347 (2018) ("2018 Reauthorization Act"). This continued with the FAA Reauthorization Act of 2024, which required new rulemaking and processes on issues that affect passengers with disabilities, and the codification of certain protections for such passengers. *See, e.g.*, Pub. L. No. 118-63, §§ 365, 506, 508, 510, 541–548, 138 Stat. 1025, 1132–34, 1192–94, 1201–11 (2024) ("2024 Reauthorization Act").

As part of its ongoing advocacy efforts, PVA has long been highly engaged in the regulatory process, including by petitioning DOT for the rulemaking that culminated in the regulation at issue in these proceedings and by providing comments during the rulemaking. Decl. ¶ 10; *see generally* PVA Petition; Comment from Paralyzed Veterans of America (June 12, 2024), https://www.regulations.gov/comment/DOT-OST-2022-0144-1945. PVA was also appointed to serve on the congressionally mandated DOT Air Carrier Access Act Advisory Committee ("ACAA Advisory Committee"). Decl. ¶ 5. PVA also served on the Assistance at Airports and on Aircraft and Related Training subcommittee of the original ACAA Advisory Committee. Decl. ¶ 6.

The Rule challenged in this action was promulgated pursuant to the ACAA, the 2024 Reauthorization Act, and certain other provisions of Title 49 of the U.S. Code. *See* Safe Accommodations Rule, 89 Fed. Reg. at 102,398–99. The Safe Accommodations Rule is a direct response to Congress' direction in the ACAA for

DOT "'to promulgate regulations to ensure non-discriminatory treatment of qualified handicapped individuals consistent with safe carriage of all passengers on air carriers'" and carries out certain rulemaking provisions required by the 2024 Reauthorization Act. *Id.* (quoting Pub. L. No. 99-435, § 3, 100 Stat. 1080, 1080 (1986)).

Although not all of PVA's concerns were fully addressed through the rulemaking, the Safe Accommodations Rule is an important step toward ensuring that people with disabilities can fly in a safe and dignified manner. The Rule, *inter alia*, sets standards for situations when an airline mishandles a passenger's personal wheelchair or scooter; requires repair or reimbursement of certain costs associated with mishandled wheelchair and scooters; requires reimbursement of fare differences and/or rebooking of flights for disabled passengers if their personal wheelchair or scooter does not fit or is not loaded onto their flight; and requires training of personnel who physically assist disabled passengers or handle wheelchairs or scooters. *See generally id.* at 102,401–05.

When initially promulgated, the effective date for the Safe Accommodations Rule was (with limited exceptions) January 16, 2025. *Id.* at 102,435. The petition for review was docketed on February 18, 2025.[1] Doc. No. 1-2, at 1. On February

[1] It appears Petitioners transmitted their petition to the Court on February 14, 2025, but it was not filed on the docket until February 18, 2025 (i.e., after the long Presidents' Day weekend).

20, 2025, DOT published a notice that it would not take enforcement actions under the Rule until March 20, 2025. 90 Fed. Reg. 9953 (Feb. 20, 2025).

LEGAL STANDARD

Federal Rule of Appellate Procedure (FRAP) 15(d) provides that a motion for leave to intervene in an action brought under FRAP 15(a) "must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention." FRAP 15 does not establish the standard for granting a motion for intervention. When determining if intervention is appropriate under Rule 15(d), this Court considers two factors: first, the statutory design of the act at issue and whether the statutory design supports intervention, and second, the policies underlying intervention in trial courts. *Texas v. Dep't of Energy*, 754 F.2d at 551.

The policies underlying intervention in trial courts are reflected in Federal Rule of Civil Procedure 24, which requires district courts to grant intervention upon a timely motion by anyone who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). To satisfy these requirements:

> (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the

> subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; [and] (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

La Union del Pueblo Entero v. Abbott, 29 F.4th 299, 305 (5th Cir. 2022) (citing *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 2015)). As this Court has noted, "'Federal courts should allow intervention where no one would be hurt and the greater justice could be attained.'" *La Union*, 29 F.4th at 305 (internal quotation omitted) (quoting *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994)).

ARGUMENT

PVA meets all requirements for intervention. Accordingly, the Court should grant PVA's motion for leave to intervene.

1. The Statutory Design Supports Intervention

The Fifth Circuit does not apply a specific standard to determine whether statutory design supports or permits intervention, but the leading cases—*International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, Local 283 v. Scofield*, 382 U.S. 205 (1965) and *Texas v. U.S. Department of Energy*, 754 F.2d 550 (5th Cir. 1985)—are instructive and demonstrate that intervention is appropriate in this case.

In *Scofield*, the Supreme Court determined that the Labor Act supported intervention by parties to NLRB proceedings even though the statute did not provide explicitly for intervention. *Scofield*, 382 U.S. at 209–10, 217. Instead, the

Act provided: "Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States Court of appeals . . . ." *Id.* at 209 (quoting 29 U.S.C. § 160(f) (1964 ed.)). The Court reasoned that intervention adhered to the goal of "obtaining a just result with a minimum of technical requirements" and "insure[d] fairness to the would-be intervenor." *Id.* at 212–13 (quotations omitted). The Court extended its holding both to parties that were unsuccessful and those that were successful before the NLRB. *Id.* at 217. The Court reasoned that a successful party could intervene in a challenge brought by an unsuccessful party, explaining that permitting intervention is beneficial to a court's ability to decide the issue, and that it facilitates the timely resolution of the whole matter by avoiding serial petitions for review. *Id.* at 212–13. The successful party, the Court held, "should not be prejudiced by [its] success before the agency." *Id.* at 222.

In *Texas v. Department of Energy*, in contrast, the Fifth Circuit denied 31 utility companies' motion to intervene in Texas's challenge to the Department of Energy's (DOE) designation of sites in West Texas as potential nuclear waste depositories under the Nuclear Waste Policy Act (NWPA). 754 F.2d at 551. This Court explained that the utilities had no role in the statutory scheme except to provide funding. *Id.* Contrasting the facts to those in *Scofield*, Judge Higginbotham, writing for the Court, found that the utilities' own rights were not being litigated, that

they had not participated in the administrative proceedings at issue, and that they would not have a basis to sue under any outcome of the appeal. *Id.* at 552. Their limited funding role did "not give the utilities such a special interest in every action taken by the DOE pursuant to the NWPA as to require their intervention." *Id.*

The statutory scheme in this case counsels in favor of permitting intervention. First, similar to *Scofield*, the applicable judicial review provision in Title 49 of the U.S. Code allows "a person disclosing a substantial interest" in an order issued by the Secretary of Transportation to seek judicial review. 49 U.S.C. § 46110(a); *see Stokes v. Sw. Airlines*, 887 F.3d 199, 202–03 (5th Cir. 2018) ("ACAA combines with other federal aviation statutes to form a comprehensive *administrative* scheme" and provides for review by petition to court of appeals). If anything, 49 U.S.C. § 46110(a) is broader than the Labor Act's provision affording judicial review to "[a]ny person aggrieved by a final order of the Board" discussed in *Scofield.* 382 U.S. at 309. As in *Scofield*, PVA experienced success before DOT—it sought a rulemaking from the agency, engaged in the rulemaking process, and ultimately a final rule was promulgated. PVA's participation will also allow for a more comprehensive and timely resolution of the matter at hand, and will limit the potential need for future proceedings.

Second, the substantive content the ACAA and the 2024 Reauthorization Act, under which the Rule was promulgated, further supports intervention. Both statutes

are parts of the overall statutory design relevant to the Safe Accommodations Rule and this case, and both contemplate an active role for organizations like PVA.

The ACAA provides for the investigation of complaints received by the Secretary of Transportation and does not limit the way that individuals or groups such as PVA may interact with DOT. It also provides for the establishment of an Advisory Committee on issues related to air travel needs of passengers with disabilities (now the ACAA Advisory Committee), to include as a member at least one representative of national veterans organizations representing disabled veterans. 49 U.S.C. § 41705 (Statutory Notes and Related Subsidiaries referencing Advisory Committee on the Air Travel Needs of Passengers with Disabilities, Pub. L. 115-257, 132 Stat. 3345 (2018)). PVA currently serves as that member. Decl. ¶ 5.

The 2024 Reauthorization Act, in turn, explicitly provides that "Representatives of individuals with disabilities" shall be included in the Aviation Rulemaking Committee for Evacuation Standards that the Act requires DOT to establish. Pub. L. No. 118-63, § 365(b)(2)(D), 138 Stat. 1132, 1134 (2024). The Reauthorization Act also requires the Transportation Secretary to "consult with . . . the Air Carrier Access Act Advisory Committee . . . and disability organizations, including advocacy and nonprofit organizations that represent or provide services to individuals with disabilities" to establish and maintain customer service dashboards relating to certain airline policies and services. *Id.* § 506, 138

Stat. at 1192 (amending 49 U.S.C. § 42308). Other sections of the 2024 Reauthorization Act likewise require DOT to confer with or appoint as members entities working with individuals with disabilities. *See, e.g.*, *id.* § 517(b)(14), 138 Stat. at 1198 (appoint "entities representing individuals with disabilities" to the Passenger Experience Advisory Committee); § 546(c)(3)(A), (f)(1), 138 Stat. at 1206–08 (consult with disability organizations when establishing a pilot program on service animals; consult with ACAA Advisory Committee in issuing guidance regarding improving training for airline personnel); § 725(f), 138 Stat. at 1268 (amending 49 U.S.C. § 47145 and requiring the Transportation Secretary to encourage engagement with disability advocacy entities when administering grants under that section).

It is evident that organizations like PVA—and PVA itself—have a direct, explicit, and significant role in the statutory design of the ACAA and 2024 Reauthorization Act. This is much more than is needed to render inapposite the limitation on intervention addressed in *Texas v. Department of Energy*.

In short, not only does the statutory design broadly afford judicial review to organizations like PVA that have a "substantial interest" in a DOT order, but it also explicitly provides for significant involvement by entities like PVA throughout the regulatory process. Moreover, the rights of PVA's members are directly protected by the statutes and Rule involved in this case. There are "real rights" of PVA at

issue, and PVA's role in the regulatory process affords it a special interest in the Safe Accommodations Rule and this case. *Cf. Texas v. Dep't of Energy*, 754 F.2d at 552. Statutory design thus weighs strongly in favor of granting PVA intervention.

2. PVA Satisfies the Requirements for Intervention as of Right under Federal Rule of Civil Procedure 24

a. PVA's motion is timely.

This Court considers four factors when evaluating the timeliness of an intervention motion:

> Factor 1. The length of time during which the would-be intervenor actually or reasonably should have known of his interest in the case before he petitioned for leave to intervene. Factor 2. The extent of prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the case. Factor 3. The extent of the prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied. Factor 4. The existence of unusual circumstances militating either for or against a determination that the application is timely.

Ross v. Marshall, 426 F.3d 745, 754 (5th Cir. 2005). Timeliness analyses are "'contextual,' and should not be used as a 'tool of retribution to punish the tardy would-be intervenor, but rather [should serve as] a guard against prejudicing the original parties by the failure to apply sooner.'" *Id.* (quoting *Sierra Club*, 18 F.3d at 1205).

PVA's motion is timely. First, this motion is filed shortly after PVA learned of this case, within thirty days of its docketing. This is consistent with the timeframe set

by FRAP 15(d), which provides that a motion for leave to intervene be filed within thirty days from the petition for review or enforcement of an agency order. Accordingly, the first timeliness factor is satisfied. Even if the motion were not made within Rule 15(d)'s timeframe, where Rule15(d) applies, it would not prevent a finding of timeliness or bar intervention: FRAP 15(d) is nonjurisdictional, and may be waived or extended for cause. *See Wilkins v. United States*, 598 U.S. 152, 157–58 (2023) (Supreme Court has observed that "most time bars are nonjurisdictional" (quotation omitted)); *Int'l Union of Operating Eng'rs, Loc. 18 v. NLRB*, 837 F.3d 593, 596 (6th Cir. 2016).

As to the second factor, intervention will cause no prejudice to the Court or the parties in this matter, which is the "most important consideration" in evaluating timeliness. *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1073 (5th Cir. 1970). "Prejudice must be measured by the delay in seeking intervention, not the inconvenience to the existing parties of allowing the intervener to participate in the litigation." *John Doe No. 1 v. Glickman*, 256 F.3d 371, 378 (5th Cir. 2001) (quoting *Sierra Club*, 18 F.3d at 1206); *see also Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 281–82 (2022). There is no briefing schedule, and no substantive activity has yet occurred in this matter. Indeed, counsel for the government entered an appearance only today, and counsel for Petitioners do not oppose PVA's motion. Accordingly, there is no basis for a finding of prejudice.

In contrast, there would be significant prejudice to PVA's interests if it is not allowed to intervene. As detailed above, PVA petitioned for the rulemaking that led to the creation of the Safe Accommodations Rule, and it (and its members) have spent years waiting for DOT and airlines to address the significant physical and financial harms faced by disabled individuals during air travel. Intervention permits PVA an opportunity to defend the Rule it sought—a Rule that could be undone should Petitioners succeed in this action. Enforcement of the Rule has already been delayed by DOT, harming PVA and its members. If the Safe Accommodations Rule is overturned, PVA would have to return to advocating with DOT and seek additional regulatory proceedings to implement the ACAA and protect disabled travelers' rights—in other words, a prejudice to its interests.

There are no additional unusual factors that militate for or against a finding of timeliness.

b. PVA has an interest in the regulation that is the subject of this action.

To intervene under Rule 24(a)(2), an intervenor must have a "direct, substantial, legally protectable interest in the proceedings." *Edwards v. City of Houston*, 78 F.3d 983, 1004 (5th Cir. 1996) (en banc) (quotation omitted). "Non-property interests are sufficient to support intervention when . . . they are concrete, personalized, and legally protectable." *Texas v. United States*, 805 F.3d at 658. An intervenor need not meet the more stringent requirements of standing: an interest

satisfies the requirement "if it is of the type that the law deems worthy of protection, even if the intervenor does not have an enforceable legal entitlement or would not have standing to pursue her own claim." *Id.* at 659. And if a case concerns a matter of public interest, the "interest requirement may be judged by a more lenient standard." *Brumfield v. Dodd*, 749 F.3d 339, 344 (5th Cir. 2014) (quotation omitted). This Court broadly construes the interest requirement: "[I]n the intervention area, the 'interest' test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Ceres Gulf v. Cooper*, 957 F.2d 1199, 1203 n.10 (5th Cir. 1992) (quotation omitted).

PVA has a direct, substantial, and legally protectable interest in the Rule. PVA petitioned the Department of Transportation to engage in the rulemaking that led to the rule now under review. PVA also provided comments to the Department regarding the Rule, and served on the ACAA Advisory Committee, whose work was germane to the Rule. Comment from Paralyzed Veterans of America (June 12, 2024), https://www.regulations.gov/comment/DOT-OST-2022-0144-1945; Decl. ¶¶ 5–6, 10. All of this required significant time and effort on the part of PVA and demonstrates its interest in the Rule and its enforcement. *See City of Houston v. Am. Air Traffic Sols., Inc.*, 668 F.3d 291, 294 (5th Cir. 2012) (reversing district court denial of motion to intervene when intervenors engineered the effort that led to

charter amendment at issue in litigation); *Wal-Mart Stores v. Tex. Alcoholic Beverage Comm'n*, 834 F.3d 562, 567 (5th Cir. 2016) (associations have the "right to intervene in lawsuits challenging the regulatory scheme that governs the profession"; "'public spirited' civic organizations that successfully petition for the adoption of a law may intervene to vindicate their 'particular interest' in protecting that law." (quoting *Am. Air Traffic Sols.*, 668 F.3d at 294)).

PVA also has an interest in the Rule by virtue of its membership. PVA members are U.S. Armed Forces veterans with spinal cord injury injuries or disease, as well as certain other related diseases that cause impairment or disability. Decl. ¶ 8. PVA members are directly affected by the Rule and are among the intended beneficiaries of its protections. As PVA detailed in its rulemaking petition, many of its members have experienced difficulties during the boarding and deplaning process, including being dropped by airline employees or contractors and being injured by inadequate and unsafe use of assistive equipment. PVA Petition at 3.

The Rule makes progress toward addressing longstanding concerns of PVA members (and of PVA), and redressing the unsafe, discriminatory conditions that PVA members are too frequently subjected to during air travel. As such, PVA members and PVA have a legally protectable interest in the Rule. *Cf. Brumfield*, 749 F.3d at 344 (individuals within the zone of interest of legislation had an interest in the legislation and were proper intervenors; primary beneficiaries of legislation

"assert not only a matter of public interest but matters more relevant to them than to anyone else"). Although standing is not required to intervene, it is plain that PVA would have standing with respect to the Rule by virtue of the harmful conditions faced by its members during air travel. *See, e.g.*, *Citizens for Clean Air & Clean Water in Brazoria Cnty. v. U.S. Dep't of Transp.*, 98 F.4th 178, 187 n.1 (5th Cir. 2024). Because PVA's interest would satisfy the higher bar for standing, it inherently satisfies Rule 24's lower "interest relating to the property or transaction" requirement for intervention.

c. The disposition of this matter may, as a practical matter, impair or impede PVA's ability to protect its interest

To succeed on a motion to intervene, the movant must "demonstrate that disposition of [the] action may, as a practical matter, impair or impede the movant's ability to protect [its] interest." *Brumfield*, 749 F.3d at 344. The impairment requirement does not demand that the movant be bound by a possible future judgment, but the impairment must be practical and not "merely theoretical." *Id.* The intervenor "need only show that if it cannot intervene, there is a possibility that its interest could be impaired or impeded." *Field v. Anadarko Petroleum Corp.*, 35 F.4th 1013, 1020 (5th Cir. 2022) (cleaned up) (quoting *La Union*, 29 F.4th at 307).

Impairment to PVA's interest is clear, and not merely theoretical: if petitioners succeed in this action, the Rule that PVA has expended significant resources advocating for will be curtailed or withdrawn. If that occurs, PVA

members will be without the protections of the Rule. *Cf. La Union*, 29 F.4th at 307 (intervenors' interest might be impaired where the law under challenge "change[d] the entire [ ] landscape for . . . [intervenors'] members and volunteers"). PVA's efforts with respect to the rulemaking will have been in vain, and it will need to take further steps with respect to a new rulemaking to encourage and assist DOT in developing and implementing other regulations that give force and effect to the mandates of the ACAA and the FAA Reauthorization Act. *See id.* ("If the district court either partially or fully grants the relief sought by the plaintiffs here, the [intervenors] will have to expend resources to educate their members on the shifting situation . . . . Further, [the challenged law] grants rights to [intervenors] and their members that could be taken away if the plaintiffs prevail.").

d. No party to this matter adequately represents Intervenors' interests.

The burden of proving that the existing parties do not adequately represent intervenors' interests is minimal. *Glickman*, 256 F.3d at 380. "'The potential intervener need only show that the representation *may* be inadequate.'" *Id.* (quoting *Sierra Club*, 18 F.3d at 1207); *see La Union*, 29 F.4th at 307–08. Although there is a presumption that the government adequately represents the interests of an intervenor when "charged by law" with representing those interests, *La Union*, 29 F.4th at 308, the government here is not so charged. *See Edwards*, 78 F.3d at 1005 (presumption only applies to suits involving matters of sovereign interest). Even if it

applied, the presumption "can be overcome by showing that the intervenor's interest is in fact different from that of the governmental party and that the interest will not be represented by the existing governmental party." *La Union*, 29 F.4th at 308 (quotations omitted). It is sufficient to show that non-identical interests "*may* lead to divergent results." *Id.*; *see Brumfield*, 749 F.3d at 346. Whether or not a presumption applies here, inadequate representation is amply shown.

Although it is possible that DOT will have the same objective as PVA as its "starting point" (namely, upholding the Safe Accommodations Rule), this is insufficient to find that DOT adequately represents PVA's interest. *See La Union*, 29 F.4th at 308. Similar to *La Union* and *Brumfield*, DOT's interests are broader than—and at times contradictory to—PVA's: DOT must consider not just the interests of PVA and its members, but also those of other stakeholders such as the airline industry, whose interests, policy goals, and incentives run contrary to PVA's. *See La Union*, 29 F.4th at 309 ("[Intervenors'] private interests are different in kind from the public interests of the State or its officials"); *Brumfield*, 749 F.3d at 346 (intervenors "easily met their minimal burden" to show inadequacy of representation because "[t]he state has many interests in this case," some of which the intervenors did not share).

The difference in interests between PVA and DOT is shown by DOT's recent action to delay the enforcement of the Rule. 90 Fed. Reg. 9953. Indeed,

even during the rulemaking process, DOT extended the notice-and-comment period over PVA's objection. *See* Comment From Paralyzed Veterans of America (Apr. 26, 2024), https://www.regulations.gov/comment/DOT-OST-2022-0144-1228. PVA's interest has always been the implementation and enforcement of a regulation to protect its members and other disabled travelers as quickly as possible; DOT, on the other hand, has competing interests that have already diverged from PVA's in the rulemaking at issue. Certainly, DOT's divergent interests *may* lead to further divergence in defense of the Rule; indeed, there is no guarantee that DOT will defend the Rule at all. The change in Administration has, moreover, increased the likelihood of divergent interests. Because the possibility of divergent interests is evident, this prong of the intervention standard is satisfied.

CONCLUSION

PVA played an important role in the process that led to the promulgation of the Safe Accommodations Rule. Its interests, and those of its members, will be impaired if petitioners' action succeeds. At the same time, the statutory scheme of the ACAA and FAA Reauthorization Act support PVA's intervention, and it meets the standards for intervention under Federal Rule of Civil Procedure 24. Accordingly, the Court should grant PVA's motion for leave to intervene under Federal Rule of Appellate Procedure 15(d).

Dated: March 20, 2025

Respectfully submitted,

/s/ Alessandra B. Markano-Stark
Alessandra B. Markano-Stark
Counsel for Intervenor

CERTIFICATE OF SERVICE

I hereby certify that on **March 20, 2025**, the foregoing document was filed using the CM/ECF system, which will affect service on all parties.

Dated: March 20, 2025

Respectfully submitted,

/s/ Alessandra B. Markano-Stark
Alessandra B. Markano-Stark
Counsel for Intervenor

CERTIFICATE OF COMPLIANCE

This filing complies with the length limitation of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 5,124 words.

This filing also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Fifth Circuit Rule 32.1 and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Baskerville Old Face font.

Dated: March 20, 2025

Respectfully submitted,

/s/ Alessandra B. Markano-Stark
Alessandra B. Markano-Stark
Counsel for Intervenor

EXHIBIT 1

No. 25-60071

In the United States Court of Appeals
for the Fifth Circuit

Airlines for America; American Airlines, Incorporated; Delta Air Lines, Incorporated; JetBlue Airways Corporation; Southwest Airlines Company; United Airlines, Incorporated,

Petitioners,

v.

United States Department of Transportation,

Respondent.

On Petition for Review of a Final Rule of the
United States Department of Transportation

DECLARATION OF ROBERT L. THOMAS, JR.

I, Robert L. Thomas, Jr., hereby declare the following:

1. I am over 18 years of age and competent to give this declaration. I have personal knowledge of the matters set forth herein.

2. I am the National President of Paralyzed Veterans of America (PVA), a national, congressionally chartered veterans service organization headquartered in Washington, D.C.

3. PVA was founded in 1946 and was chartered by the United States Congress in 1971. Since its founding, PVA's mission has been to serve armed forces veterans who have a spinal cord injury or disease (SCI/D), and to change lives and build better futures for seriously disabled veterans by empowering them to regain their freedom and independence. PVA works to improve the quality of life for veterans and all people with SCI/D through its medical services, benefits, and legal advocacy. Among other topics, PVA advocates for quality health care, research addressing SCI/D, civil rights, and accessibility—including combatting discrimination in air travel—to maximize independence for the disabled veterans it serves. PVA's work on accessible and nondiscriminatory air travel spans many decades. PVA has for decades advocated for appropriate, nondiscriminatory accommodations for disabled travelers, including those using wheelchairs.

4. In 1986, after the Supreme Court held in *United States Department of Transportation, et al. v. Paralyzed Veterans for America, et al.* that Section 504 of the Rehabilitation Act of 1973 does not apply to commercial airlines, PVA led advocacy efforts for passage of the Air Carrier Access Act, which prohibits discrimination by air carriers against passengers with disabilities. That law was passed in 1986, in part as a direct response to the Supreme

Court's holding. To this day, PVA continues to advocate for safe, accessible, dignified, and nondiscriminatory air travel.

5. PVA is a member of the DOT's Air Carrier Access Act Advisory Committee (ACAA Advisory Committee). The ACAA Advisory Committee was established in September 2019. PVA's Chief Policy Officer, Heather Ansley, was appointed by DOT to serve on the original ACAA Advisory Committee, and was appointed again last fall to the second iteration of the Committee as its co-chair.
6. PVA also was a member of the Assistance at Airports and on Aircraft and Related Training subcommittee of the original ACAA Advisory Committee.
7. Thousands of service members and veterans sustain spinal cord injuries or are diagnosed with spinal cord diseases every year. Those injuries or diseases can result in a loss of motor skills and/or sensory function, including paralysis.
8. PVA currently has over 15,000 members. In order to qualify for PVA membership, a person must be a citizen of the United States or its territories; be a veteran of the U.S. Armed Forces whose discharge was other than dishonorable; and have a spinal cord injury or disease. Conditions such as amyotrophic lateral sclerosis (ALS), multiple sclerosis (MS), syringomyelia, spina bifida, severe spinal stenosis causing neurological impairment, and certain other related diseases qualify an individual for membership.

9. Disabled veterans face significant barriers to accessing public spaces, and can face discrimination on the basis of their disability. This occurs in a range of contexts, including during air travel.

10. In February 2022, PVA petitioned the DOT to engage in a rulemaking to address issues related to the transfer of passengers into and out of aisle chairs, the duty of air carriers to maintain information about issues that occur during the boarding and deplaning process, and an air carrier's duties in the event that it damages, loses, or otherwise mishandles a wheelchair or other assistive device. That petition led to the DOT's rulemaking that culminated in the December 2024 rule, *Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs*, 89 Fed. Reg. 102398 (Dec. 17, 2024). A true and correct copy of PVA's petition is attached to this Declaration as Attachment A. PVA also submitted comments to the DOT during the rulemaking process: one opposing the extension of the notice-and-comment period beyond that originally provided for, and one on the substantive content of the proposed rule.

11. Beyond its activities related to *Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs*, PVA regularly interacts with the DOT and other stakeholders in the airline industry, both informally and formally.

12. In September 2022, PVA published the results of a survey it conducted on the air travel experience of passengers with disabilities, in collaboration with several other disability-focused organizations. Over 1260 individuals responded to the survey. Of respondents who travel with a wheelchair or scooter, almost 70% reported their device had been damaged. Over 63% of respondents indicated the need to use an aisle chair to board an aircraft; those respondents commonly reported that they felt that personnel had not been properly trained to assist them. Over 73% of respondents indicated that they avoid air travel because of concerns about potential damage to their wheelchair, and over 62% of respondents indicated that they avoid air travel because of a concern about being able to use an aircraft lavatory. Of respondents needing accommodations, 69% at least sometimes had trouble receiving necessary accommodations, and almost 32% usually or always had trouble receiving necessary accommodations.

13. PVA members have shared their own stories related to air travel. Among other experiences, one of PVA's past presidents testified before the House Transportation and Infrastructure Committee's Aviation Subcommittee in 2019 about injuries he sustained while boarding a plane using an aisle chair. As he boarded, his knee hit nearly every armrest on the way to his seat. He

recalled that each time he hit his knee, the jolt sent pain radiating to his hip, which was injured.

14. Another PVA member, who currently serves as a PVA National Vice President, will no longer travel by air. Among her experiences, she recounted that her left shoulder was injured on a transfer to an aisle chair due to being incorrectly strapped to it by airline-provided assistants. On her second and last airline trip after she became disabled, 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.

15. Another PVA member found that, after a flight, his power wheelchair was damaged: the controller arm was broken and his backup camera was missing.

16. Another PVA member was improperly transferred from his personal wheelchair into an aisle chair by an inadequately trained airline-provided assistant. The assistant dropped the member and fractured his tailbone, leading to a life-threatening infection that hospitalized him for months.

17. Another PVA member was dropped while being transferred from the aisle chair to his personal wheelchair.

18. The above represent only a fraction of the stories shared by PVA members and other disabled air travelers.

19. PVA has a direct and substantial interest in *Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs*, both for its own sake and for the sake of its members.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED WITHIN THE UNITED STATES ON MARCH 20, 2025

By: _____

ROBERT L. THOMAS, JR.

Attachment A

Paralyzed Veterans of America
EST. 1946

801 18th Street NW
Washington, DC 20006-3517
(O) 202.872.1300
www.PVA.org

Chartered by the Congress of the United States

PETITION FOR RULEMAKING

Petitioner Paralyzed Veterans of American ("PVA")[1] hereby petitions the Department of Transportation (the "Department") pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. § 553(e), to initiate a rulemaking proceeding to implement standards and requirements for boarding and deplaning airline passengers with mobility disabilities, in accordance with the mandate by Congress to "review, and if necessary revise," regulations regarding the boarding and deplaning process "to ensure that passengers with disabilities … receive dignified, timely, and effective assistance at airports and on aircraft from trained personnel." FAA Reauthorization Act of 2018, Pub. L. No. 115-254 § 440, 132 Stat. 3347 (2018). As discussed further below, PVA specifically requests that the Department address issues related to the transfer of passengers into and out of aisle chairs, the duty of air carriers to maintain information about issues that occur during the boarding and deplaning process, and an air carrier's duties in the event that they damage, lose, or otherwise mishandle a wheelchair or other assistive device.

BACKGROUND

The Air Carrier Access Act ("ACAA") of 1986, 49 U.S.C. § 41705, prohibits air carriers from discriminating against passengers with disabilities. The Department is charged with implementing the ACAA, and is, thus, under a continuing obligation to ensure that airlines are not discriminating against persons with disabilities. To that end, the Department has published numerous regulations setting forth standards that airlines must follow regarding a variety of issues related to mobility disabilities, as well as other categories of disabilities.

However, to date, the Department has failed to adequately regulate how airlines must board and deplane passengers with mobility disabilities. The Department's regulations on the subject (1) require that air carriers provide boarding and deplaning assistance, 14 C.F.R. § 382.101, (2) prohibit air carriers from hand-carrying passengers with disabilities on and off the plane, *id.*, and (3) prohibit air carriers from leaving passengers with disabilities unattended in an aisle chair for longer than thirty minutes, *id* § 382.103. Aside from those requirements, air carriers are generally free to handle the boarding and deplaning process as they see fit.

The lack of additional requirements has resulted in inconsistent and often inadequate policies and practices and years of suffering by passengers with disabilities. In 2017, airline passengers filed over 34,000 disability-related complaints. For passengers with paraplegia or quadriplegia, some of the most common complaints involved the boarding and deplaning process.[2] Passengers report being dropped or otherwise improperly transferred into and out of their wheelchairs, the boarding and deplaning aisle chairs, and their seats, and are often forced to sit for long periods of times in ill-fitting and non-ergonomic

[1] PVA thanks Karianne Jones and Democracy Forward Foundation for their help in putting together this petition.
[2] *Implementation of the FAA Reauthorization Act of 2018: Hearing Before the Subcomm. On Aviation of the H. Comm. On Transportation and Infrastructure*, 116th Cong. 3 (2019) (statement of David Zurfluh, Nat'l President, PVA) *available at* https://www.congress.gov/116/meeting/house/109978/witnesses/HHRG-116-PW05-Wstate-ZurfluhD-20190926.pdf.

aisle chairs—all of which can cause serious and sometimes fatal injury.[3] Moreover, airlines often return passengers' wheelchairs in damaged condition.[4] That, in turn, forces passengers to wait for lengthy periods of time in the ill-fitting aisle chairs or standard airport wheelchairs while a temporary, and often similarly ill-fitting, replacement chair is found—again subjecting passengers to the risk of serious injury. Indeed, just recently, a disability rights activist, Engracia Figueroa, died as the result of injuries she incurred when she was forced to sit in an airport chair, similar to an aisle chair, for five hours and then use a temporary chair for months—all because an airline had damaged her wheelchair during travel.[5]

Recognizing the continued severity of the problem, Congress specifically directed the Department to "review and, if necessary, revise" its regulations "to ensure that passengers with disabilities who request assistance while traveling in air transportation," including "requests for assistance in boarding or deplaning an aircraft," "receive dignified, timely, and effective assistance at airports and on aircraft from trained personnel," FAA Reauthorization Act of 2018, § 440, 132 Stat. at 3347.

PVA acknowledges that the Department established an advisory committee that examined and made recommendations regarding Section 440 of the FAA Reauthorization Act,[6] and invited PVA to sit as a member on that Committee, as well as on a subcommittee related to the training of air carrier personnel. The Committee, however, did not address all the issues related to boarding and deplaning that can affect the health, safety, and dignity of passengers with mobility disabilities during air travel. Accordingly, PVA asks the Department, as part of its ongoing effort to comply with Section 440 of the FAA Reauthorization Act, to implement the following:

(1) Mandate that carriers assign specific airline personnel who are highly trained in how to board and deplane passengers with significant mobility disabilities and provide them with properly maintained equipment to assist in the boarding and deplaning process;

(2) Mandate that carriers not transfer passengers to aisle chairs until they are ready to board, or, upon arrival, until the carrier is ready to immediately transfer the passenger from the aisle chair to the passenger's wheelchair;

(3) Establish a standardized reporting process for air carriers to follow when an issue occurs in the boarding and deplaning process—regardless of whether a customer makes a complaint to the airline—including by specifying what information the airline must report or track and requiring the air carrier to make the reports publicly available;

---

[3] *See* U.S. Access Board, *Guidelines for Aircraft Boarding Chairs*, https://www.access-board.gov/research/human/guidelines-aircraft/#contents.

[4] In 2019, air carriers reported mishandling or damaging 10,548 wheelchairs and scooters. *The Airline Passenger Experience: What It Is and What It Can Be: Hearing Before the Subcomm. On Aviation of the H. Comm. On Transportation and Infrastructure*, 116th Cong. 3 (2020) (statement of Lee Page, Senior Assoc. Advoc. Director, PVA), *available at* https://transportation.house.gov/imo/media/doc/Testimony%20-%20Page.pdf.

[5] Bethany Dawson, *A disability activist died from body sores associated with the loss of her $30,000 wheelchair that was 'destroyed' during a United Airlines flight, advocacy group claims*, Business Insider (Nov. 6, 2021), https://www.businessinsider.com/disability-activist-died-after-united-airlines-destroyed-30k-wheelchair-2021-11.

[6] Charter of the Air Carrier Access Act Advisory Comm., U.S. Dep't of Transp. (Sept. 28, 2021), *available at* https://www.transportation.gov/sites/dot.gov/files/2021-10/2021%20ACAA%20Advisory%20Committee%20Charter.pdf.

(4) Establish a timeline for air carriers to adhere to when replacing a wheelchair or other assistive device or providing compensation for the damage of such, as well as requiring air carriers to provide adequate interim accommodations; and

(5) Clarify that Department regulations require airlines to return all wheelchairs and other assistive devices in the condition in which they were received.

STATEMENT OF INTEREST

Paralyzed Veterans of America is a congressionally chartered veterans service organization founded in 1946. PVA is dedicated to helping veterans who have spinal cord injuries and disorders secure quality healthcare, earned benefits, and civil rights. PVA has long advocated for accessible air travel.

Many of PVA's members have experienced difficulties during the boarding and deplaning process. For example, in January 2019, a PVA member was improperly transferred from his personal wheelchair into an aisle chair by an inadequately trained airline employee. The employee dropped the member and fractured his tailbone, leading to a life-threatening infection that hospitalized him for months.[7] After leaving the hospital, the member tried to take action against the airline, but was told that he had waited too long to file his complaint.[8]

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.[9] 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.

In December 2019, a PVA employee was put into an aisle chair that did not accommodate his needs. The footrest was too small and his feet kept falling off the aisle chair as he was being brought into and out of the airplane. Moreover, the seat straps were not sufficient to keep him in a secure seated position. As a result, his hip and lower backside hit every armrest all the way back to his assigned seat. At his seat, the personnel tried to lift him up over the fixed armrest and into his seat but they were not strong enough. This resulted in his being dropped onto the armrest as he slid into the seat.[10]

And in March 2018, a PVA member was dropped when airline personnel were not paying attention while transferring him from the aisle chair to his wheelchair. Thankfully, he was not injured and needed no medical care.

Other stories abound.[11] PVA thus has a keen interest in the Department regulating the boarding and deplaning process in the manner herein presented.

---

[7] PVA, *Air travel inhumane and dangerous for many people with disabilities 35 years after law mandated accessibility* (Nov. 17, 2021), https://pva.org/news-and-media-center/recent-news/air-travel-inhumane-35-years-after-acaa/.

[8] Joseph Shapiro & Allison Mollenkamp, *Despite calls to improve, air travel is still a nightmare for many with disabilities*, NPR (Nov. 9, 2021), https://www.npr.org/2021/11/09/1049814332/despite-calls-to-improve-air-travel-is-still-a-nightmare-for-many-with-disabilit.

[9] *The Airline Passenger Experience*, *supra* n. 4 at 3.

[10] *Id*.

[11] PVA, *Share you Story*, https://air-access.org/ (last accessed Feb. 11, 2022); PVA, *An Inside Look at Air Travel for People Who Use Wheelchairs*, YouTube (Oct. 6, 2021), https://youtu.be/-zWa4D-a5cU.

REQUESTS

In accordance with its general rulemaking authority, in addition to the specific direction by Congress in the FAA Reauthorization Act that the Department "review, and if necessary, revise" its regulations regarding, among other things, "requests for assistance in boarding or deplaning an aircraft," PVA makes the following requests:

A. Passengers should be assisted by only certain highly trained airline personnel with proper equipment.

The Department should mandate that carriers assign specific, specially trained airline personnel to assist passengers who must use an aisle chair in the boarding and deplaning process. These personnel must receive specialized, hands on training in how to safely assist passengers with significant mobility impairments and the use of all boarding and deplaning equipment. Furthermore, airlines must equip these teams with transfer kits that include slings, slide boards, and other devices to assist passengers with disabilities as well as ensuring that they have access to well-maintained aisle chairs and other boarding and deplaning devices.

Without such a mandate, passengers with significant disabilities are often being physically lifted from their chair to an aisle chair by personnel with improper training in how to do this safely. The result is that passengers are dropped, contorted, bumped, or otherwise mishandled—all causing potentially serious injuries. As David Zurfluh, Immediate Past President of PVA, has explained: "It is unconscionable to think that someone with a spinal cord injury or disorder should be assisted in multiple transfers to board and subsequently deplane an aircraft without having been properly educated about how to assist them."[12] The Department must act to stop this practice.

B. Passengers should not be moved until the airline is ready to transfer them out of the aisle chair.

The Department currently prohibits air carriers from leaving a passenger unattended in an aisle chair for longer than thirty minutes. 14 C.F.R. § 382.103. But *any* time in an aisle chair puts passengers at risk of injury, given how small, ill-fitting, and non-ergonomic the aisle chairs are. Moreover, using an aisle chair often leaves passengers feeling dehumanized and trapped since they are strapped to the device and unable to propel it independently.

The Department should therefore require an air carrier not transfer a passenger into an aisle chair until it is ready to seat the passenger (boarding) or transfer the passenger back into their personal wheelchair (deplaning), unless that passenger specifically requests to be transferred at an earlier time.

C. Airline carriers should implement consistent incident reporting practices to be accountable to passengers.

At present, airlines are not required under the ACAA to maintain records about issues that arise during the boarding and deplaning process. Accordingly, passengers with disabilities are often unable to seek recompense—as the complaint process boils down to a he said/she said exchange. Congress has specifically asked the Department to provide "descriptions of protections and responsibilities … related to … the right of passengers with disabilities … to file a complaint with a covered air carrier."[13]

---

[12] *Implementation of the FAA Reauthorization Act of 2018*, *supra* n. 2 at 4.
[13] FAA Reauthorization Act of 2018, § 434, 132 Stat. at 3343.

In accordance with that mandate, and to better hold airlines accountable, the Department should implement standardized reporting practices for all airline carriers to document and track the number of incidents that occur and to allow passengers to seek recourse, including by specifying what information an air carrier must document. It should further require those reports to be made publicly available.

D. The Department should mandate a timeline and process for airlines to abide by after damaging or losing a passenger's wheelchair or other assistive device.

Airlines report damaging approximately 1.5% of the wheelchairs and scooters they transport in a given year.[14] And although airlines are required to compensate passengers with disabilities for damaging such devices and/or replace them, there is currently no required timeline for doing so. As a result, passengers with disabilities often have to wait months to have their damaged wheelchair repaired or to receive a new chair—spending that time in a broken or temporary, ill-fitting chair that can cause serious injury or death. Indeed, that is what happened to Ms. Figueroa, the disability rights activist who died after an air carrier damaged her personal wheelchair—she was forced to spend months in a temporary wheelchair while waiting for the airline to replace the $30,000 wheelchair that it had damaged.[15]

The Department should mandate that airlines provide compensation for, or a replacement of, a damaged or lost wheelchair or other assistive device within a certain time frame. It should also mandate that airlines provide adequate interim accommodations to passengers with disabilities while they wait for a new wheelchair. And it should mandate that airlines have a protocol in place for what to do when a wheelchair is mishandled to ensure the safety of the passenger.

E. Airlines should be required to return all wheelchairs and other assistive devices in the condition they were received.

Department regulations state that an air carrier "must return wheelchairs, other mobility aids, and other assistive devices to the passenger in the condition in which [it was] received." 14 C.F.R. 382.129(b). The title of that regulation, however, refers to wheelchairs and other assistive devices that have been disassembled for stowage on the plane. *See id.* In light of air carrier responses to incidents, we are concerned that the duty of the air carrier with regard to a passenger's wheelchair or other mobility device is not sufficiently clear.

Any reading of the regulation requiring only disassembled wheelchairs to be returned in the manner received would thwart the purpose of the ACAA: allowing air carriers to return wheelchairs and other assistive devices—what have been described as passengers' "legs"[16]—in worse or damaged condition, so long as they had not disassembled for stowage on the plane. The Department should, therefore, issue interpretive guidance and/or engage in additional rulemaking to make clear that 14 C.F.R. § 382.129(b) requires that air carriers return *any* wheelchair or other assistive device in the condition it was received.

CONCLUSION

The current state of air travel poses significant difficulties and risks for passengers with disabilities. As Congress mandated, the Department must review and revise its regulations concerning the boarding and deplaning process.

[14] *The Airline Passenger Experience*, *supra* n. 4 at 4.
[15] Dawson, *supra* n. 5.
[16] Dawson, *supra* n. 5.

Petitioner Paralyzed Veterans of America thus respectfully requests that the Secretary of Transportation initiate a rulemaking proceeding pursuant to the Administrative Procedures Act, 5 U.S.C. § 553(e), to revise 14 C.F.R. §. 382 to include the aforementioned provisions protecting the rights of airline passengers with disabilities. If you would like to discuss this petition, please contact Heather Ansley at HeatherA@pva.org.