THE EXCLUSION OF PEOPLE WITH DISABILITIES FROM AIR TRAVEL

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ABSTRACT

In 2022, 18.6 million people identified as travelers with a disability. Their traveling is made difficult, if not impossible, when their accessibility tools are damaged, they encounter insensitive staff perpetuating disability stigma, or they face inaccessible facilities. This Article argues that such *constructed exclusion* is reinforced by the limitations of public accommodations law in the United States, the lack of a private right of action under the Air Carrier Access Act, and the courts' failure to recognize a constitutional right to travel as commercial air travel becomes a mode of public transportation.

Under the Americans with Disabilities Act (ADA), airports, aircrafts, and airline websites do not qualify as places of public accommodation. Further, the Air Carrier Access Act (ACAA) does not offer adequate protection to air travelers with disabilities, as there is no private right of action. And despite the known benefits of positive corporate social performance, their constructed exclusion persists due

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to the highly unequal bargaining power between passengers, including those with disabilities, and airlines. This Article argues that to protect people with disabilities in air travel, legislators and legal scholars should advocate for an ideological shift in the way people with disabilities are viewed and champion a private right of action under the ACAA.

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INTRODUCTION

In July 2021, Engracia Figueroa, a prominent disability advocate, was flying home from Washington, D.C., to Los Angeles, California.[1] When she arrived, she discovered that United Airlines workers had broken her $30,000 custom power wheelchair.[2] According to her attorney, the reopening of an old sore after being forced to wait five hours in a manual wheelchair at the Los Angeles International Airport caused an infection.[3] The ensuing infection led to hospitalization, emergency surgery, and ultimately, her death three months later.[4]

Although death is rare in air travel for people with disabilities, one life lost is one too many. Furthermore, damage to wheelchairs and other accessible devices in air travel is far too common, especially for individuals whose mobility depends on them.[5] There are significantly more consumer complaints filed by people with disabilities than the average consumer.[6] The inconveniences encountered by the average air traveler are not the same as those challenges faced by air travelers with disabilities. It is far more difficult for people with apparent and non-apparent disabilities to travel, especially when there is an unplanned gate change, a lost connecting flight, an encounter with insensitive staff, or lost luggage.

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1. Emily Alpert Reyes, *An airline broke an activist's wheelchair. Her death months later amplified calls for change*, L.A. TIMES (Jan. 6, 2022), https://www.latimes.com/california/story/2022-01-06/la-activist-broken-wheelchair-airlines-death [https://perma.cc/7GVK-74RR]; Gabriela Miranda, *Disability rights activist says United Airlines damaged her $30,000 wheelchair*, USA TODAY (July 21, 2021), https://www.usatoday.com/story/travel/airline-news/2021/07/21/woman-seeks-30-k-united-airlines-after-wheelchair-destroyed/8031352002/ [https://perma.cc/C2BB-LH66].

2. Reyes, *supra* note 1; Miranda, *supra* note 1.

3. Reyes, *supra* note 1.

4. *Id.*

5. *See* THE OFF. OF AVIATION CONSUMER PROT., AIR TRAVEL CONSUMER REPORT 42, 43 (2025) (reporting that in July 2025, U.S. airlines mishandled an average of 1.14 wheelchairs and scooters per 100 enplaned).

6. *See* Wesley L. Major & Sarah M. Hubbard, *An Examination of Disability-Related Complaints in the United States Commercial Aviation Sector*, 78 J. & AIR TRANSP. MGMT. 43, 47 (2019) (finding the disability complaint rate to be almost two times higher than consumer complaints); *see also* Michael J. McCarthy, *Improving the United States Airline Industry's Capacity to Provide Safe and Dignified Services to Travelers with Disabilities: Focus Group Findings*, 33 DISABILITY & REHAB. 2612 (2011) (regarding quantitative analysis indicating that the number and rate of disability complaints significantly exceed the number and rate of general consumer complaints for air service).

While Engracia's tragic experience highlights the serious consequences of inadequate support for individuals with disabilities in air travel, it also underscores the broader legal context that leaves them vulnerable. Title II of the Civil Rights Act of 1964 protects people from discrimination in places of public accommodation on the basis of race, color, religion, sex, and national origin.[7] Public accommodations are places that serve the public, including hotels, restaurants, and theaters. This law, while established to ensure equal access to the goods and services available to the public, did not cover people with disabilities. It was not until the passage of the Americans with Disabilities Act ("ADA") of 1990 twenty-six years later that people with disabilities were granted some measure of protection from discrimination in public spaces.

Building on this legal framework, Title III of the ADA prohibits discrimination against people with disabilities in places of public accommodation.[8] The list of places of public accommodation, while not exhaustive, mentions similar places as Title II of the Civil Rights Act of 1964, including hotels, restaurants, theaters, community centers, retail stores, offices of professional services—such as law offices and medical practices—parks, places of public transportation, and places that provide social services.

Protecting access to places of accommodation has historically been linked to the right to travel—made famous by the movie *The Green Book*[9] and highlighted in *Heart of Atlanta Motel*, *Inc*. v. *United States.*[10]

While Title III of the ADA provides essential protections for individuals with disabilities in various public accommodations, the historical context of access rights and ongoing challenges disabled travelers face reveal significant gaps in these protections. Given the purpose and history behind these laws, one would think that airports and airlines would be prime sites for ADA protection. Instead, as this

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7. Title II of Civil Rights Act of 1964, 42 U.S.C. §2000.

8. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12181–12189.

9. *See THE GREEN BOOK* (Universal Pictures 2018) (depicting the historical challenges Black travelers faced in accessing public accommodations prior to the Civil Rights Act of 1964). This Article acknowledges that this film was mainly from the perspective of the white male character and not the Black male character encountering the discrimination.

10. Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 259 (1964) (emphasizing that "[t]he power of Congress to regulate interstate commerce extends to local activities which might have a substantial and harmful effect on interstate commerce").

Article describes, two factors prevent disabled individuals from enjoying equal access to air travel. First, neither airports nor airplanes are considered places of public accommodation covered by the ADA. While every individual case is different, and our society has not yet designed all structures with the most human variation in mind,[11] some measures were taken to prevent discrimination. Instead, people with disabilities are covered by the Air Carrier Access Act ("ACAA") because when the ADA was passed, it was not to "invalidate or limit the remedies, rights, and procedures of any other federal . . . law" already in place, such as the ACAA.[12] The second is that airlines engage in a series of practices that make air travel challenging, and sometimes even inaccessible, to those with disabilities. This results in what this Article calls their "constructed exclusion"—a violation of their unenumerated constitutional right of freedom of movement (travel).[13]

To better understand the underlying issues contributing to this constructed exclusion from air travel, this Article will systematically analyze the relevant laws and policies that either perpetuate or fail to address the challenges faced by disabled individuals in a critical area of access that has become commonplace. Part I lays out the basis for the constructed exclusion argument by briefly describing the history of commercial air travel and the laws and policies that led to this constructed exclusion of disabled individuals. Part I will also provide an overview of the current experiences of air travelers with disabilities. Part II delves deeper into the existing legal framework and the gaps created by the ACAA and the ADA due to the absence of a private right of action. Part II also discusses general limits in public accommodations law. Part III turns to the U.S. Constitution, arguing that as the federal government increases funding to airports, it is slowly recognizing that air travel is becoming a mode of public transportation as it becomes more affordable. Part IV addresses why the positive relationship

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11. Richard K. Scotch & Kay Schriner, *Disability as Human Variation: Implications for Policy*, 549 ANNALS AM. ACAD. POL. & SOC. SCI. 148, 148–60 (1997) (arguing that disability is human variation, not just a minority or medical problem, and that policy should redesign institutions to enable true inclusion, such as through universal design, flexible workplaces, and targeted support).

12. Nondiscrimination on the Basis of Disability by Public Accommodations and Commercial Facilities, Relationship to Other Laws, 75 Fed. Reg. 56236, 56239 (Sep. 15, 2010).

13. *See* Noah Smith-Drelich, *The Forgotten Fundamental Right to Free Movement*, 119 NW. U. L. REV. 811, 815–18 (2025) (arguing for a constitutional right to free movement).

between social (ethical) performance and financial performance[14] is simply not enough given limited bargaining power, which leads to the recommendations outlined in Part V. Part V recommends an ideological shift towards people with disabilities and a private right of action under the ACAA to help eradicate their constructed exclusion from air travel.

PART I. COMMERCIAL AIR TRAVEL

Constructed exclusion is a practice that effectively prevents certain individuals or groups from accessing a service or opportunity, even if there is no explicit prohibition. Constructed exclusion often involves legally and systematically designed barriers or policies that deliberately exclude certain groups from participation, access, or opportunities. The legal conditions imposed make it practically very difficult for certain people to participate, thereby excluding them. This is different from de facto separation or segregation, which refers more to racial or societal separation seen in practice but not mandated by law. This often results from social, economic, or residential patterns, leading to segregated communities, schools, or neighborhoods without explicit legal enforcement. In the instance of air travel, constructed exclusion is different because it refers to not having real and meaningful legal recourse to address the negative experiences that deter people with disabilities from air travel, such as damage to accessibility tools, encounters with insensitive staff that perpetuate disability stigma, or the inability to access facilities. This constructed exclusion of people with disabilities is now entrenched in a legal paradigm that gradually evolved, whether intentional or not, from commercial mail delivery service to luxurious travel to common carrier.

The following section offers a brief look into the history of commercial air travel and an overview of the experiences of people with disabilities navigating air travel. This background information stages a discussion about how existing laws that govern air travel fail to adequately address the challenges faced by people with disabilities.

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14. TIMOTHY FORT, VISION OF THE FIRM 57 (4th ed. 2023) ("ninety-five studies covering over thirty years of research indicates a positive relationship between social [ethical] performance and financial performance").

A. History of Commercial Air Travel

Commercial airline travel has transformed from a luxury accessible only to the elite few to an industry that purports to be open to all. The first scheduled commercial airline service began in 1914 with the St. Petersburg-Tampa Airboat Line in Florida, which only serviced these two cities.[15] Then, in 1925, the Air Mail Act, also known as the Kelly Act, was passed to facilitate the development of the commercial airline industry.[16] This law allowed the U.S. Post Office to contract with private airlines to transport mail.[17]

Shortly thereafter, the Civil Aeronautics Act of 1938 established the federal government's role in managing air traffic and promoting civil aviation.[18] The Civil Aeronautics Authority was charged with regulating airline fares and routes, eventually culminating in the establishment of the Federal Aviation Administration ("FAA") in 1958.[19] The FAA was established to ensure the safe and efficient use of U.S. airspace.[20] Flying was seen as a luxury only a few could afford until the creation of the Boeing 707, which entered commercial service in 1958.[21] This commercial jetliner revolutionized air travel by making it faster, more efficient, and more affordable.[22] These innovations enabled air travel to enter the public

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15. *The Story of the World's First Airline*, INT'L AIR TRANSP. ASS'N, https://www.iata.org/en/about/history/flying-100-years/firstairline-story/ [https://perma.cc/D9CC-YG37].

16. *A Brief History of the FAA*, FED. AVIATION ADMIN. (Nov. 15, 2021), https://www.faa.gov/about/history/brief_history [https://perma.cc/98HS-AW9V]; *Air Mail and the Birth of Commercial Aviation*, NAT'L AIR & SPACE MUSEUM (Dec. 09, 2021), https://airandspace.si.edu/stories/editorial/air-mail-and-birth-commercial-aviation [https://perma.cc/48VB-HUS5] (establishing that the Air Mail Act is known as the Kelly Act because it was sponsored by Representative M. Clyde Kelly).

17. *Air Mail*, *supra* note 16.

18. Theodore Wallin, *Congress Centralizes Regulation of U.S. Commercial Air Traffic*, EBSCO (2023), https://www.ebsco.com/research-starters/politics-and-government/congress-centralizes-regulation-us-commercial-air-traffic [https://perma.cc/57JK-CMZS].

19. Federal Aviation Administration Act 1958, 49 U.S.C. § 106 (administration authorization).

20. 49 U.S.C. § 40103(b)(1) (sovereignty and use of airspace).

21. VANESSA R. SCHWARTZ, JET AGE AESTHETIC: THE GLAMOUR OF MEDIA IN MOTION 4 (2020)

22. *Id.* (explaining that the introduction of the Boeing 707 "increased load capacity, which made ticket prices drop, thereby expanding its passenger market").

sector, and airlines now offer standardized commercial services purportedly open to all who can pay.[23]

B. Law Governing Air Travel

In *U.S. Department of Transportation v. Paralyzed Veterans of America* ("*PVA*"), the U.S. Supreme Court held that Section 504 of the Rehabilitation Act, prohibiting disability discrimination in federally funded programs, only applied to those who directly receive such funding, not beneficiaries.[24] Thus, commercial air carriers are not liable under Section 504 because they are not direct recipients of federal funding; they are only beneficiaries.[25] Due to concerns that the Court's decision in *PVA* would leave disabled air travelers open to possible discriminatory treatment by airlines,[26] Congress passed the ACAA.[27]

Under the ACAA, people with disabilities in the United States cannot be required to travel with companions.[28] Airlines cannot refuse to transport any individual based on a disability except for reasons related to safety; however, this is limited.[29] Further,

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23. *See A Brief History of the FAA*, *supra* note 16; Bureau of Lab. Stats., *Air Transportation: NAICS 481*, U.S. DEP'T OF LABOR, https://www.bls.gov/iag/tgs/iag481.htm [https://perma.cc/P3ZT-YLYN] ("Scheduled air carriers fly regular routes on regular schedules and operate even if flights are only partially loaded.").

24. U.S. Dep't of Transp. v. Paralyzed Veterans of Am., 477 U.S. 597, 597 (1986); *see also* MARK C. WEBER, UNDERSTANDING DISABILITY LAW 238 (4th ed. 2024) (explaining that the U.S. Supreme Court ruling excluded air carriers from Section 504).

25. *Paralyzed Veterans,* 477 U.S. at 598.

26. Thomas v. Nw. Airlines Corp., No. 08-11580, 2008 U.S. Dist. LEXIS 66864, at *7 (E.D. Mich. Sep. 2, 2008) (finding under *Paralyzed Veterans* that plaintiffs' discrimination claims under Section 504 are contingent on whether the defendant airline "has discretion over federal funding that would qualify it as a recipient and make it subject to provisions of the Rehabilitation Act").

27. Air Carrier Access Act of 1986, 49 U.S.C. § 41705.

28. *See May a transit provider require a rider to travel with a personal care attendant (PCA)?*, FED. TRANSIT ADMIN., https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/frequently-asked-questions#22 [https://perma.cc/Y4XL-3E4N] ("Under the Department of Transportation (DOT) Americans with Disabilities Act (ADA) regulations at 49 C.F.R. Section 37.5(e), a transit entity is prohibited from requiring that an individual with disabilities be accompanied by a personal care attendant (PCA).").

29. 14 C.F.R. § 382.19(c) (2025); *see also About the Air Carrier Access Act*, U.S. DEP'T OF TRANSP., https://www.transportation.gov/airconsumer/passengers-disabilities [https://perma.cc/J3DJ-7QS9] ("Airlines may exclude anyone from a flight if carrying the person would be inimical to the safety of the flight."); *Travel*

airlines cannot *require* advanced notice from travelers with disabilities.[30]

In July 2022, the Department of Transportation ("DOT") created a Bill of Rights to protect people with disabilities from discrimination and enforce the ACAA.[31] This considered, the first enumerated right—the right to be treated with dignity and respect—is violated the moment a person with a disability is not able to access an airline's website.[32] This scenario is something that other travelers do not have to worry about. While legal protections exist on paper, the reality many travelers with disabilities face suggests a gap between policy and practice. Their experiences reveal ongoing challenges that extend beyond the digital realm, affecting their safety, comfort, and dignity throughout the entire journey.

C. The Experience of People with Disabilities

Air travel is always hard, but traveling with a disability makes it significantly harder.[33] Non-conscious, negative implicit

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with a travel companion, AIRFRANCE, https://wwws.airfrance.us/information/passagers/acheter-billet-avion-pmr-autres-handicaps/pmr-accompagnateur [https://perma.cc/ZYB2-U3QM] (indicating that some airlines like AirFrance may still require a person with a disability to travel with a companion).

30. 49 U.S.C. § 41705 ("Airlines may not require advanced notice that a person with a disability is traveling. Air carriers may require up to 48 hours' advance notice for certain accommodations that require preparation time (e.g., respirator hook-up, transportation of an electric wheelchair on an aircraft with less than 60 seats).").

31. *DOT Announces First-Ever Bill of Rights for Passengers with Disabilities, Calls on Airlines to Seat Families Together Free of Charge*, U.S. DEP'T OF TRANSP. (July 8, 2022), https://www.transportation.gov/briefing-room/dot-announces-first-ever-bill-rights-passengers-disabilities-calls-airlines-seat [https://perma.cc/7VR5-V3AA]. Before the Bill of Rights, there had been DOT regulations and guidance on aircraft accessibility requirements as well as clarifications to the ACAA. One such regulation includes specific provisions related to accessible aircraft features, seating, and assistance. This final rule outlined specific requirements for accessible aircrafts and services. *See* Airline Customer Service and Accessibility Regulations, 14 C.F.R. § 382 (2025).

32. *See, e.g.*, *American Airlines Sued for Inaccessible Website*, NAT'L COMPLIANCE GRP. BLOG (Nov. 19, 2021), https://www.nationalcompliancegroup.com/blog/american-airlines-sued-for-inaccessible-website [https://perma.cc/QPM3-8RM4] (describing a lawsuit brought by a visually impaired man asking a federal court to require American Airlines to make their website for accessible to the visually impaired).

33. International Air Transportation Association, *Air Travel Accessibility* (Dec. 2025), https://www.iata.org/en/iata-repository/pressroom/fact-sheets/fact-

attitudes, to which airline staff and other passengers are not immune, affect people with disabilities during air travel, just as they do everywhere they go.[34] Stressful interpersonal interactions can be especially hard for people with certain disabilities like autism and dementia.[35] Delays and cancellations disproportionately affect travelers with disabilities, who may miss important announcements, resulting in missed flights and a cascade of ensuing issues.[36]

A 2022 study conducted by the United States Government Accountability Office revealed that people with disabilities face several severe challenges, including difficulties commuting inside an airport and an increased likelihood of facing additional screening by the Transportation Security Administration ("TSA").[37] They have difficulty obtaining wheelchairs, receiving adequate customer assistance, and accessing onboard lavatories.[38] In addition, airline staff do not provide special accommodations or stow wheelchairs appropriately without damage.[39]

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sheet-accessibility/ [https://perma.cc/83HB-KHAN] (acknowledging the struggles people with disabilities face and urging multilateral collaboration and harmonized standards to make air travel accessible—such as by improving recognition and assistance for invisible disabilities, safe handling and advance info-sharing for mobility aids, consistent SSR usage, certified service-dog standards, sustainable responses to rising wheelchair/assistance demand, one-click accessibility information, industry training (INCLAVI), and proportionate regulation on extra-seat requests) [hereinafter IATA Fact Sheet].

34. *See* Michelle Clare Wilson & Katrina Scior, *Attitudes Towards Individuals with Disabilities as Measured by the Implicit Association Test: A Literature Review*, 35 RSCH. DEVELOPMENTAL DISABILITIES 294, 294–321 (2014) (revealing moderate to negative implicit attitudes towards people with disabilities).

35. *See* IATA Fact Sheet, *supra* note 33 ("Negotiating the various processes involved in air transport can be a stressful experience for even the most seasoned travelers. It is particularly challenging for those with conditions that are not immediately apparent, such as autism or dementia. Unfortunately, the very nature of these invisible symptoms can lead to misunderstandings, false perceptions, and unfair judgments.").

36. Yaniv Poria, Arie Reichel & Yael Brandt, *The Flight Experiences of People with Disabilities: An Exploratory Study*, 49 J. TRAVEL RSCH. 216, 222 (2010) (describing that travelers with impaired vision worry about missing flight change announcements and that travelers who fast before air travel due to problems accessing aircraft bathrooms are significantly impacted by flight changes).

37. *Passengers with Disabilities: Barriers to Accessible Air Travel Remain*, U.S. GOV'T ACCOUNTABILITY OFF. (Nov. 17, 2022), https://www.gao.gov/products/gao-23-106358 [https://perma.cc/C97Y-6JUM].

38. *Id.*

39. *Id.* at 6.

Overall, the "number and rate of disability complaints significantly exceed the number and rate of general consumer complaints for air service."[40] The rate of disability complaints varies by airline,[41] which highlights that the legal standard fails to adequately constrain airlines' behavior. Across all airlines, the number of disability complaints is increasing,[42] and barriers still exist for people with disabilities, even though airlines have tried to respond and improve.[43]

Professor McCarthy, a scholar studying inter-city air travel using focus groups of individuals who work in the airline industry, explored: "(1) the level of sensitivity among personnel to travelers' needs, (2) the training currently provided, (3) the areas in which additional training might be beneficial, and (4) the organizational/systems-level commitment to dignified assistance to all travelers."[44] The focus group participants revealed that some staff were empathetic and wanted to provide dignified services but lacked the training.[45] In addition, airline staff who wanted to assist at times did not have adequate equipment.[46] Organizational commitment to not discriminate against people with disabilities varied between companies.[47] Therefore, travelers with disabilities cannot expect consistent, adequate service. The ACAA does not clearly set forth expectations for the airline industry because it does not adequately define "training to proficiency."[48]

Consequently, gaps in staff proficiency, equipment availability, and organizational commitment—not merely isolated incidents of poor service—undermine travelers' experiences and amplify the need for concrete, standardized training requirements. Because the ACAA stops short of defining training to proficiency, airlines are left to interpret and implement varying standards. This

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40. Major & Hubbard, *supra* note 6, at 43; *see also* McCarthy, *supra* note 6, at 2612 ("[I]n 2005 the United States Department of Transportation (USDOT) received 498 disability-specific complaints (5.7% of total complaints) against air transportation providers.").

41. Major & Hubbard, *supra* note 6, at 48–49; *see also* McCarthy, *supra* note 6, at 2614–17 (2011).

42. Major & Hubbard, *supra* note 6, at 47; *see also* McCarthy, *supra* note 6, at 2612.

43. *Passengers with Disabilities*, *supra* note 35.

44. McCarthy, *supra* note 6, at 2612.

45. *Id.*

46. McCarthy, *supra* note 6, at 2615.

47. *Id.* at 2613.

48. *See* 14 C.F.R. § 382.141(a)(1).

perpetuates inconsistent service precisely at a time when, due to rising passenger volumes,[49] there are increasing numbers of travelers who rely on competent, respectful assistance.

D. Anticipated Rise in the Number of Travelers with Disabilities

Understanding the societal attitudes towards people with disabilities and the challenges airline staff face is essential, especially as the aviation industry prepares for an increasing number of travelers with disabilities in the post-pandemic landscape.[50] This increase creates a pressing need for effective strategies to enhance accessibility and ensure a smoother travel experience for passengers.

In the first ten months of 2020, COVID-19 created a loss of $935 billion in the worldwide tourism industry.[51] Today, "[a]ir travel and the aviation-centered economy have soared back to the pre-pandemic levels, with the [TSA] announcing a record of nearly 3 million passengers screened in one day at the end of June 2023."[52] Aviation remains a vital component of the tourism industry and its cultural exchange.[53] However, air travel impacts much more than just

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49. *People Are Flying Now More Than Ever. It's Time to Fly Faster.*, BOOM (July 17, 2025), https://boomsupersonic.com/flyby/people-are-flying-now-more-than-ever-its-time-to-fly-faster [https://perma.cc/YW48-W5FL] (reporting that 2024 air travel surpassed pre-pandemic levels with strong projected growth).

50. *See* Johanna Jainchill, Christina Jelski & Robert Silk, *The State of Accessible Travel,* TRAVEL WEEKLY (Sept. 19, 2022), https://www.travelweekly.com/Travel-News/Travel-Agent-Issues/State-of-accessible-travel-2022-part-1 ("[A]pproximately 12.5 million disabled people traveled in 2018-19. Factoring in the growth of baby boomers expected to acquire a disability as they age, [a travel consultancy] estimates that number to nearly triple to 33.4 million by 2028.") [https://perma.cc/X4UE-U5KN].

51. Duncan Madden, *The Covid-19 Pandemic Has Cost The Global Tourism Industry $935 Billion,* FORBES (Jan. 14, 2021), https://www.forbes.com/sites/duncanmadden/2021/01/14/the-covid-19-pandemic-has-cost-the-global-tourism-industry-935-billion/ [https://perma.cc/8YA9-3BNE].

52. Sean Ludwig, *The Most Important Issues Facing the Aviation Industry*, U.S. CHAMBER OF COM. (Sep. 17, 2024), https://www.uschamber.com/infrastructure/aviation/the-most-important-issues-facing-the-aviation-industry [https://perma.cc/E8N5-CQS6].

53. *See* AVIATION AND TOURISM: IMPLICATIONS FOR LEISURE TRAVEL 337 (Anne Graham, Andreas Papatheodorou & Peter Forsyth, eds., 2010) ("Changes in aviation policy have had a profound impact on leisure tourism growth and the patterns it has taken.").

the tourism industry; it also impacts global connectivity, trade, economic growth, and job creation.[54]

In 2022, an estimated 18.6 million people identified as travelers with disabilities.[55] Overall, the industry should expect more travelers with disabilities in the future because of long-COVID[56] and the increased number of younger disabled adults surviving into old age due to medical, technological, and social developments.[57] Airlines should keep in mind that, as populations age and retirement ensues, more people will experience some form of impairment and thus will benefit from the ability of airports and airlines to accommodate disability.[58] Moreover, surveys conducted by the AARP consistently show that many people ages fifty and above travel more frequently after retirement, often taking multiple trips a year.[59]

In light of the anticipated increase in travelers with disabilities and current usage rates, it becomes imperative for industry leaders to prioritize addressing potential disruptions in air travel. Leaders in the industry should focus on issues that may interrupt an individual's air travel, such as delays and cancellations.[60]

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54. *See e.g.*, Michael D. Irwin & John D. Kasarda, *Air Passenger Linkages and Employment Growth in U.S. Metropolitan Areas*, 56 AM. SOCIO. ASS'N 524, 535 (finding significant economic effects and employment growth in areas centrally located for air travel).

55. THERESA FIRESTINE, BUREAU OF TRANSP. STAT., TRAVEL PATTERNS OF AMERICAN ADULTS WITH DISABILITIES 3 (2024) (showing how this number is lower than the 25.5 million reported in 2017).

56. *See* Nancy L. Fleischer, et al. *Long COVID and New Onset Disability Nearly 2 Years After Initial Infection*, 68 AM. J. PREVENTIVE MED. 1168, 1169–70 (2025) (showing that adults with long COVID are more likely to experience increases in multiple disability domains).

57. *See* Mark Priestly, *Disability Studies and Psychology: New Allies*, *in* DISABILITY AND PSYCHOLOGY: CRITICAL INTRODUCTIONS AND REFLECTIONS 84, 85 (Dan Goodley & Rebecca Lawthom eds., 2006) (identifying an increase in both "younger disabled adults who survive into old age" and "the number of previously non-disabled adults who acquire impairments in later life").

58. *Id.*

59. Vicki Gelfeld, *Americans Already Packing Their Bags for 2019*, AARP (Dec. 4, 2018), https://www.aarp.org/pri/topics/social-leisure/travel/2019-travel-trends/ [https://perma.cc/ZZ7U-947Y] (depicting the AARP's Travel Trends National Survey).

60. Ludwig, *supra* note 52 (associating cancellations and delays primarily with a decreased workforce).

1. Travelers with Apparent Disabilities[61]

Air travelers with disabilities experience a plethora of obstacles before, during, and after their flight—any one of which is significant, and the confluence of which is often overwhelming. This section highlights how passengers with disabilities are not only especially affected by common inconveniences but also face unique barriers.

Any air traveler who flies often may, at some point, experience damaged personal items or lost luggage. For someone with a disability, however, the harm is magnified if their luggage contains items that assist with their disability (e.g., medical supplies or a portable battery or repair kit for their wheelchair). They may experience damage to their assistive devices, such as wheelchairs or mobility scooters.[62] In 2024, the DOT found that American Airlines mishandled wheelchairs and mobility scooters and provided unsafe mobility assistance, fining the airline 50 million dollars.[63] Specifically, DOT's investigation revealed unsafe physical assistance, undignified treatment of eighteen wheelchair users, and repeated failures to provide timely assistance.[64]

The ACAA does not require travelers with disabilities to notify airlines ahead of time.[65] Still, airlines often encourage passengers with disabilities to preemptively inform them about their needs. To minimize the risk of damage to a prosthetic or any other assistive feature, travelers may choose to inform the airline beforehand. However, even navigating the process to inform the

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61. Apparent disabilities are those that are readily perceivable (e.g., people using wheelchairs, scooters, or prosthetics).

62. *See* John Morris, *First Data on Wheelchair Damage by Airlines Released by DOT*, WHEELCHAIR TRAVEL (Mar. 14, 2019), https://wheelchairtravel.org/first-data-wheelchair-damage-by-airlines-february-2018/ [https://perma.cc/2KNN-ZUHX] (referencing the U.S. Department of Transportation Air Travel Consumer Report).

63. *DOT Issues Landmark $50 Million Penalty Against American Airlines for Its Treatment of Passengers with Disabilities*, U.S. DEP'T OF TRANSP. (Oct. 23, 2024), https://www.transportation.gov/briefing-room/dot-issues-landmark-50-million-penalty-against-american-airlines-its-treatment [https://perma.cc/CBE5-6P9K].

64. *Id.*

65. *About the Air Carrier Access Act*, *supra* note 27 (explaining that airlines may not require advanced notice that a person with a disability is traveling but that air carriers may require up to forty-eight hours' advance notice for certain accommodations that require preparation time (e.g., respirator hook-up, transportation of an electric wheelchair on an aircraft with less than sixty seats)).

airline to improve one's chances of receiving timely and effective assistance can be a significant burden.

People with disabilities must also deal with inaccessible lavatories once on the aircraft. Everyone and anyone should have the right to use a restroom with dignity, yet some report that single-aisle flights lack accessible bathrooms,[66] forcing people with disabilities to dehydrate or wear adult diapers.[67] In fact, former U.S Secretary of Transportation, Pete Buttigieg, has pointed out that "millions of wheelchair users are forced to choose between dehydrating themselves before boarding a plane or avoiding air travel altogether."[68] Traveling is already often stressful enough without having to worry about accessing a restroom.

2. Travelers with Non-apparent Disabilities[69]

To bridge the examination of the ACAA's provisions and the various factors affecting service delivery, it is crucial to recognize how the individual characteristics of travelers—particularly those with non-apparent disabilities—further complicate the interactions and perceptions within the airline environment. Passengers with non-apparent disabilities are unfairly disadvantaged because, when judged against an able-bodied standard,[70] they do not fit the expected "norm" and are therefore misunderstood by airline staff and other passengers.

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66. Michael D. Schlicting, A Transportation Study with Implications for Those with Disabilities (2024) (Ph.D. dissertation, University of Wisconsin-Madison).

67. Suzanne Costas, *Flying While Disabled Is a Nightmare. It Shouldn't Be This Way*, L. A. TIMES (Nov. 24, 2023), https://www.latimes.com/opinion/story/2023-11-24/airlines-holiday-travel-wheelchair-disability-mobility-access [https://perma.cc/J5ML-F7HK].

68. *U.S. Department of Transportation Requires Airline Lavatories to Be More Accessible for Wheelchair Users*, U.S. DEP'T OF TRANSP. (July 26, 2023), https://www.transportation.gov/briefing-room/us-department-transportation-requires-airline-lavatories-be-more-accessible [https://perma.cc/55R8-XSFV].

69. This article adopts the term "non-apparent" to replace the concepts of "visible" or "invisible" disabilities, as these terms are inherently ableist, relying on a subjective standard of perception that prioritizes sight.

70. The term "able-bodied" is used here for readability, although the author agrees that "non-disabled" is a preferable term. *See* LABIB RAHMAN, DISABILITY LANGUAGE GUIDE 4 (July 2019), https://disability2022.sites.stanford.edu/sites/g/files/sbiybj26391/files/media/file/disability-language-guide-stanford_1.pdf [https://perma.cc/LSV5-523A].

The International Air Transportation Association describes the challenges of people with non-apparent disabilities during air travel, especially those with "deafness, autism, or dementia."[71] For example, the behavior of autistic people may be misinterpreted due to their struggle with social cues, resulting in conflicts with fellow staff and other passengers. Those with Attention Deficit Hyperactivity Disorder (ADHD) may speak without considering the impact of their words due to their impulsivity, which may come off as inconsiderate.[72] People with a Traumatic Brain Injury (TBI) who encounter cognitive or emotional changes affecting their social interactions may seem rude.[73] Mental health disorders like depression, anxiety, or Post Traumatic Stress Disorder (PTSD) impact communication and mood, which then impacts social interactions by leading to either social withdrawal or behavior that may also come across as rude.[74] Additionally, some people with non-apparent disabilities have trouble navigating airport environments, like those with reading disabilities, such as dyslexia, because of their inability to read boards with gate listings.[75] Other non-apparent disabilities that may be subject to

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71. *Air Travel Accessibility for Passengers with Disabilities*, IATA (Dec. 2024), https://www.iata.org/en/iata-repository/pressroom/fact-sheets/fact-sheet-accessibility/ [https://perma.cc/LE5D-98AM]; *see* Aliyu M. Tata, Matthew Ebbatson & Christopher Fluke, *Exploring Airport Navigation Challenges Faced by Airline Travelers with Hidden Disabilities*, 11 INT'L J. AVIATION, AERONAUTICS & AEROSPACE 1, 3 (2024) (reviewing several studies of the difficulty with air travel faced by people with non-apparent disabilities, including autism, hearing impairments, diabetes, asthma, and cancer).

72. Warren Magnus, Arayamparambil C. Anilkumar, & Kamleh Shaban, *Attention Deficit Hyperactivity Disorder*, STATPEARLS, https://www.ncbi.nlm.nih.gov/books/NBK441838/ [https://perma.cc/G5R9-4HG7] (describing that individuals with ADHD often struggle with verbal impulsivity) (last updated Aug. 8, 2023).

73. Ash Barnes et al., *'I am Trying so Hard to Smile': Ableism and Feeling Rules When Living with Traumatic Brain Injury*, 27 SCANDINAVIAN J. DISABILITY RSCH. 635, 640 (2025) (describing that people with a TBI face social communication challenges and worry about being seen as "rude").

74. National Center for PTSD, *Relationships*, U.S. DEP'T OF VETERANS AFFS. (Mar. 26, 2025), https://www.ptsd.va.gov/family/effect_relationships.asp [https://perma.cc/28CM-6V98] (describing that people suffering from PTSD might avoid closeness with others, struggle to relax, and sometimes come across as "tense or demanding").

75. William Crandall et al., *Transit Accessibility Improvement Through Talking Signs Remote Infrared Signage*, NAT'L ACADEMIES (Mar. 15, 1995), https://ntlrepository.blob.core.windows.net/lib/5000/5300/5352/95-0050-7.html [https://perma.cc/MBJ7-SQRZ] (describing that transit stations, an analogous transportation hub, "present unique challenges to people who are print disabled"

stigmatization during travel include, but are not limited to, chronic illness, chronic fatigue, cancer, and Human Immunodeficiency Virus (HIV).[76] The complexity of how non-apparent disabilities are perceived not only affects the experiences of travelers but also highlights the broader societal attitudes that influence airline staff and passengers alike, underscoring the need to address the ableism prevalent in these interactions starting with an ideological shift in the way we view people with disabilities.

Social and cultural influences often condition people to believe that people who are familiar or similar to oneself are "good."[77] Because people with disabilities are often seen as "different" than able-bodied people, non-apparent disabilities can lead to harmful misunderstandings during air travel. For example, some airline staff may encounter unstructured social interactions between two passengers that appear to be tense. In these situations, the airline staff may be likely to blame the disabled passenger involved given the stigma attached to disabilities.[78] Adequate training for airline staff should focus on the psychological factors that contribute to ableism.

Increased understanding of non-apparent disabilities among airport and airline employees and fellow passengers is particularly necessary because of how difficult it is for passengers with non-apparent disabilities in these social interactions to "come out of the closet," or disclose their disability.[79] Just as it can be difficult for

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who "must visit specific points along potentially crowded and complex paths of travel having no signs which are legible to them").

76. *See* Ignor Dos Santos et al., *Accessibility for Passengers with Hidden Disabilities in Air Transport: A Literature Review*, 3 J. AIR TRANSP. RES. SOC'Y 1, 2 (2024) (summarizing the literature on the challenges faced by air travelers with non-apparent disabilities and noting that "[p]assengers with hidden disabilities at an airport are prone to sensory overstimulation, making social interaction, environmental comprehension, and staying in the location for long waiting periods challenging").

77. *See* Dana Dunn, *Understanding Ableism and Negative Reactions to Disability: Engaging in Critical Thinking Can Be Helpful in Altering Beliefs and Avoiding Ableist Conclusions*, AM. PSYCH. ASS'N (Dec. 15, 2021), https://www.apa.org/ed/precollege/psychology-teacher-network/introductory-psychology/ableism-negative-reactions-disability [https://perma.cc/Q43S-5SRX].

78. Erving Goffman, *Selections from Stigma*, *in* THE DISABILITY STUDIES READER 133, 133 (5th ed. 2017).

79. Arising from the gay rights movement in the 1970s and 1980s, the phrase refers to an individual's public revelation of their sexual orientation. *See* Michael Stambolis-Ruhstorfer & Abigail C. Saguy, *How to Describe It? Why the Term Coming Out Means Different Things in the United States and France*, 29

people with marginalized sexual orientations or gender identities to come out due to the social, emotional, and personal significance of their identity, it is often difficult for people with non-apparent disabilities to reveal that they have ongoing challenges or needs that are not readily apparent.[80] Passengers with non-apparent disabilities should not be expected to "come out" in order to receive equal treatment in air travel.

The significance of disclosure is further illuminated by Erving Goffman's analysis of stigma, which emphasizes how societal perceptions can lead to discrediting individuals with non-apparent disabilities, making it more challenging for some to disclose.[81] This highlights the pressing need for greater insight and understanding in these interactions. Goffman describes "stigma [as] really a special kind of relation between an attribute and the stereotype that causes a person to be 'discredited' by others."[82] Thus, as attitudes towards people with non-apparent disabilities ultimately lie in the eye of the beholder, those with non-apparent disabilities are subjected to presuppositions.[83] Therefore, because these disabilities are not readily apparent and have the potential to perpetuate additional emotional harm when misunderstood, additional insight and awareness is needed.

Building on Goffman's insights, because some non-apparent disabilities may not be immediately noticeable, embracing human variation[84] requires patience and careful observation to understand the experiences of individuals with such disabilities. It is important to

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SOCIO. F. 808, 811–12 (2014) (describing the origins and use of the phrase in the United States and France).

80. The analogy used here is meant to highlight how stigma can further marginalize people with disabilities, as it has with other marginalized groups. Disability interacts with race, gender, class, language, immigration status, and other identities to produce distinct, compounded travel-discrimination experiences; apparent vs. non-apparent disability is a useful but non-monolithic axis, and attention to power, stigma, institutional practices, and contextual cues is required to address intersectional harms. Both concepts—decisions to disclose and the apparent and non-apparent distinction—operate within a social field shaped by judgment and expectation; understanding that dynamic helps bridge the personal stakes of disclosure with the broader, intersectional patterns of marginalization.

81. *See* Goffman, *supra* note 78.

82. *Id*.

83. Ann Davis, *Invisible Disability*, 116 ETHICS 153, 198 (2005).

84. Scotch & Schriner, *supra* note 11, at 149.

acknowledge this human variation[85] and the reality that some non-apparent disabilities only become noticeable after some observation, while others can manifest in an "intermittently apparent" manner.[86] Margaret Price, a disability scholar, cites the stimming[87] behaviors exhibited by some autistic individuals as an example of a disability that appears intermittently.[88] Notwithstanding some progress, air travel remains inaccessible for people with apparent and non-apparent disabilities. To understand why, it is necessary to examine the shortcomings of both the ACAA and the ADA as they pertain to air travel, as explained in the next section.

E. Business–Social Legitimacy and Financial Best–Interest Not Enough

Our society cannot rely solely on business self-regulation or market forces to address discrimination and protect disability rights. Just as Americans could not let the market regulate itself in hopes of someday eradicating racial discrimination, the same goes for disability discrimination.[89] Harvard Law Professor Joseph William Singer was right to assert that "the idea that the market controls all

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85. Arlene S. Kanter, *The Law: What's Disability Studies Got to Do with It or an Introduction to Disability Legal Studies,* 42 COLUM. HUM. RTS. L. REV. 403, 426–27 (2011) (citing David Pfeiffer, *The Philosophical Foundations of Disability Studies*, 22 DISABILITY STUD. *Q.* 3 (2002)); Scotch & Schriner, *supra* note 11 (urging that policymakers and the public recognize that disability is human variation—not just a minority or medical problem).

86. Margaret Price, *The Bodymind Problem and the Possibilities of Pain*, 30 HYPATIA 268, 272 (2015).

87. Margaret Price, *Defining Mental Disability, in* DISABILITY STUDIES READER 306 (4th ed., 2013) ("*Stimming* . . . is a self-soothing repetitive activity that may be practiced by persons with a variety of disabilities, including autism, obsessive-compulsive disorder, or anxiety.").

88. *Id.*

89. *See* Joseph William Singer, *We Don't Serve Your Kind Here: Public Accommodations and the Mark of Sodom*, 95 B.U. L. REV. 929, 938 (2015) (arguing that civil rights legislation still permits discriminatory actions in places of public accommodation) ("neither law nor markets are sufficient to eradicate invidious discrimination"); *see also* Cass R. Sunstein, *Lochner's Legacy*, 87 COLUM. L. REV. 873, 918–19 (1987) ("the central issue in numerous areas of law. . .is whether there is a constitutional requirement of neutrality that commands preservation of the status quo as reflected in market outcomes, or instead whether the Constitution, recognizing the artifactual quality of the market allocation, permits and sometimes demands change"); Kimberly Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1346 (1988) (suggesting that how to address discrimination is a matter of ideological lens rather than an objective legal standard).

invidious discrimination is, and has always been, demonstrably false."[90] Just as Singer described, the idea that a person facing discrimination can "just go elsewhere" absolutely misses the point.[91] The point is not to find another store or transportation service provider willing to treat them with dignity, but to enter these spaces without worrying about discrimination and constructed exclusion.[92]

While a private right of action is needed to incentivize comprehensive change, airlines could be more responsive to consumer complaints to increase accessibility and thus earn social legitimacy. Social legitimacy refers to the perception that a company's actions, practices, and existence are aligned with societal norms, values, and expectations.[93] Legitimacy helps businesses gain acceptance and support from stakeholders, communities, and the public. It involves being seen as appropriate, desirable, and credible within the social environment in which the business operates.[94] Achieving social legitimacy helps businesses build trust, enhance reputation, and sustain their operations over time. Milton Moskowitz detailed that social legitimacy involves the following:

> "Pollution control, equal employment opportunity, minority and female representation on the board of directors, support of minority enterprise, responsible and irresponsible advertising, charitable contributions, community relations, product quality, plant safety, illegal politicking, disclosure of information, employee benefits, respect for privacy, support for cultural programs, responsiveness to consumer complaints, fair dealings with customers."[95]

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90. Singer, *supra* note 89, at 2766, 2785 (referencing Shalia Dewan, *Discrimination in Housing Against Nonwhites Persists Quietly, U.S. Study Finds*, N.Y. TIMES (June 12, 2013)) (discussing subtle discrimination faced by nonwhite homebuyers and renters); *see also* Catherine Ruetschlin, *Markets Don't Stop Racism but They Can Perpetuate It*, DEMOS (Aug. 21, 2014), http://www.demos.org/blog/8/21/14/markets-dont-stop-racism-they-can-perpetuate-it [http://perma.cc/DZ42-FHDU] ("The classically oblivious treatment of racism as an inefficiency that will be eroded in markets by the pursuit of profits has failed to produce results.").

91. *See* Singer, *supra* note 89, at 938.

92. *Id.* at 938 (making this discrimination argument in relation to race).

93. Mark C. Suchman, *Managing Legitimacy: Strategic and Institutional Approaches*, 20 ACAD. MGMT. R. 571, 574 (1995).

94. *Id.* (applying Suchman's definition of legitimacy to a social context).

95. Milton Moskowitz, *Profiles in Corporate Responsibility: The Ten Worst, The Ten Best,* 13 BUS. & SOC'Y R. 29, 29 (1975); *see generally* Michael Magnan & Giovanna Michelon, *Corporate governance and corporate social responsibility: A*

The evolution of a company's social performance is measured by its social enterprise.[96] A for-profit social enterprise aims to create more significant public benefits or positive external impacts than a traditional for-profit company.[97] Unlike a typical commercial business, companies striving for positive social performance specifically evaluate their success based on both financial indicators (such as profits, shareholder value, and return on investment) and their effectiveness in tackling social issues.[98] With this dual focus, the business essentially has a double bottom line,[99] as it strives to achieve financial success for its owners while also contributing positively to society.[100]

The portion of Moskowitz's definition that addresses responsiveness to consumer complaints and fair dealings with customers is significant here.[101] Unresponsiveness to complaints is, in general, bad for business—and yet, this has not been enough to

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reconciliation with tension, *in* HANDBOOK ON CORPORATE GOVERNANCE AND CORPORATE SOCIAL RESPONSIBILITY (Michael Magnan & Giovanna Michelon eds, 2024).

96. Robert A. Katz & Antony Page, *The Role of Social Enterprise*, 35 VT. L. REV. 59, 86 (2010).

97. *Id*. (comparing nonprofit and for-profit social enterprises).

98. Kathleen Wilburn & Ralph Wilburn, *The Double Bottom Line: Profit and Social Benefit*, 57 BUS. HORIZONS 11, 12 (2014); Leslie Hughes, *The 'Double Bottom Line' Business Model: Defining Success Beyond Profit,* CAL. BUS. J. (Oct. 6, 2025), https://calbizjournal.com/the-double-bottom-line-business-model-defining-success-beyond-profit/ [https://perma.cc/N68M-J5SL] (overviewing the "double bottom line" model, which focuses on profit and social/environmental impact; explaining incentives to adopt this model (consumer/employee/ESG investor demand), examples of brands who adopt it (e.g., Patagonia), measurement challenges and frameworks (GRI/ESG), and arguing that purpose-driven brands gain trust, loyalty, and long-term resilience).

99. Katz & Page, *supra* note 93, at 86 (the double bottom line seeks to "do well" for its owner while "doing good" for society); *see, e.g*., ANDREW W. SAVITZ & KARL WEBER, THE TRIPLE BOTTOM LINE: HOW TODAY'S BEST-RUN COMPANIES ARE ACHIEVING ECONOMIC, SOCIAL, AND ENVIRONMENTAL SUCCESS-AND HOW YOU CAN TOO xiii (2006) (some commentators advocate for a "triple bottom line" whereby firms measure their success along three dimensions—economic, social, and environmental (a.k.a., "people, planet, profit")).

100. Katz & Page, *supra* note 96, at 86.

101. *See* Moskowitz, *supra* note 95; *see also* West v. Nw. Airlines, Inc., 995 F.2d 148, 151 (9th Cir. 1993) (noting that a claim for breach of the covenant of good faith and fair dealing was too tenuously connected to airline regulation to trigger preemption under the Airline Deregulation Act); *see also* Northwest, Inc. v. Ginsberg, 572 U.S. 273 (2014) (holding that the Airline Deregulation Act (ADA) preempts frequent flyer members' state-law claims for breach of the implied covenant of good faith and fair dealing).

change the business practices of airlines that constructively exclude people with disabilities. Consider American Airlines, which paid a $50 million fine for mistreating passengers with disabilities, and went on conducting business as usual.[102] This should not be how airlines respond to consumer complaints; instead, they should respond with comprehensive reforms. Part of airlines' response should be to incorporate the notion of human variability staff training and aircraft design.[103]

In addition to harming disabled travelers, constructive exclusion harms an airline's profit through the loss of sales.[104] Not addressing the numerous complaints of people with disabilities who have reported damaged accessibility devices, like wheelchairs, creates the current constructed exclusion of people with disabilities by discouraging them from traveling, which also reduces airline revenues.[105] Additionally, airlines are economically harmed by their own discrimination because they must pay the sanctions imposed by the DOT for discriminatory business practices toward people with disabilities.[106]

Unresponsiveness to consumer complaints does not only cause airlines to lose business but also miss opportunities. If airlines reduced the number of consumer complaints[107] that address the needs of all travelers, including people with disabilities, third-party benefits would result, as was the case with "curb cuts."[108] While curb cuts were designed to assist wheelchair users, they also benefited bikers,

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102. *DOT Issues Landmark*, *supra* note 63.

103. *See* RAHMAN, *supra* note 70.

104. *Id.*

105. Kings Floyd, *Trips Not Taken, Money Not Made: Inaccessible Air Travel Hurts Disabled Travelers and Airlines Alike*, THE CENTURY FOUND. (Apr. 3, 2024), https://tcf.org/content/report/trips-not-taken-money-not-made-inaccessible-air-travel-hurts-disabled-travelers-and-airlines-alike/ [https://perma.cc/P9DB-C668].

106. *DOT Issues Landmark*, *supra* note 63.

107. *See Ginsberg*, 572 U.S. 273, 288-89 (2014).

108. JAY TIMOTHY DOLMAGE, ACADEMIC ABLEISM: DISABILITY AND HIGHER EDUCATION 86 (2017) (explaining how curb cuts intended to accommodate wheelchair users benefit others); *see Ronald L. Mace Papers 1974-1998*, NC STATE UNIV. LIBRS. (Mar. 1999), https://www.lib.ncsu.edu/findingaids/mc00260/summary [https://perma.cc/6JHD-V96D] (describing how Mace contracted polio as a child and quickly realized the challenges people with disabilities face, leading him to pioneer the concept of universal design and creating aesthetically pleasing buildings with an inclusive design that most people could use regardless of ability).

skaters, and people with strollers.[109] Still, this reality has not been enough motivation for airlines.

A meta-analysis of 251 studies examining the link between corporate social performance (CSP) and corporate financial performance (CFP) revealed a small positive effect.[110] However small it may be, this effect indicates that, although an airline could ignore the needs of people with disabilities and be profitable, acting ethically is the better financial choice. Studies also show that providing mindful services is a quick way to increase brand caché consumer loyalty.[111]

Complying with established laws and policies achieves customers' "hard trust," or customer confidence that the company's actions will continue to be regulated by legal standards and public opinion.[112] It also builds customers' "real trust" or the belief that company behavior is constrained by certain moral commitments, such as integrity.[113] However, obtaining hard trust and real trust is often the minimum standard to ensure safety and prevent legal liability. This trust still does not get to the heart of constructed exclusion, as people with disabilities still lack meaningful bargaining power, which must be achieved through legal reform.

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109. Angela Glover Blackwell, *The Curb Cut Effect*, STAN. SOC. INNOVATION REV. (Winter 2017), https://ssir.org/articles/entry/the_curb_cut_effect, [https://perma.cc/WFK6-TY75].

110. Timo Busch & Gunnar Friede, *The Robustness of the Corporate Social and Financial Performance Relation: A Second‐Order Meta‐Analysis*, 25 CORPORATE SOC. RESP. & ENV'T MGMT. 583, 583 (2018) ("The data sample combines 25 previous meta‐analyses, yielding a sample size of one million observations. There is a highly significant, positive, robust, and bilateral CSP‐CFP relation. The relation is positive regardless of whether firms focus on ecological or social aspects, though corporate reputation turns out to be a key CSP determinant. There is a strong CSP‐CFP relation for operational CFP.")

111. Raouf Ahmad Rather et al*., Customer Brand Identification, Affective Commitment, Customer Satisfaction, and Brand Trust as Antecedents of Customer Behavioral Intention of Loyalty: An Empirical Study in the Hospitality Sector*, 29 J. GLOB. SCHOLARS MKTG. SCI. 196, 200–02 (2019) (applying an integrated model—grounded in social identity and relationship-marketing theory—and finding that customer brand identification predicts customer behavioral intention of loyalty via affective commitment, customer satisfaction, and brand trust.); GABRIELLE WATERS & SHANSHI LI, THE ROUTLEDGE HANDBOOK OF CONSUMER BEHAVIOUR IN HOSPITALITY AND TOURISM 48–49 (Saurabh Kumar Dixit ed., 2017).

112. FORT, *supra* note 14, at 195–97 (describing "hard trust").

113. *Id*. at 198–99 (describing "real trust").

PART II. THE CURRENT LEGAL FRAMEWORK

Due to the inefficiency of market forces in correcting this problem, Congress enacted several measures to prevent discrimination in air travel. The Rehabilitation Act provides some protections for disabled individuals, but it falls short due to the *Paralyzed Veterans* suit that spurred the ACAA. The Rehabilitation Act of 1973 protects disabled individuals in federally funded spaces and programs.[114] This includes ground transportation services receiving federal funds, like trains and bus lines. In *U.S. Department of Transportation v. Paralyzed Veterans of America*, the U.S. Supreme Court narrowly interpreted Section 504 of the Rehabilitation Act of 1973,[115] holding that it did not automatically apply to commercial airlines. The Court reasoned that, unlike airport operators, commercial airlines were not the intended recipients of federal financial assistance.[116] Therefore, people with disabilities did not receive protections comparable to those provided in ground transportation.[117]

Paralyzed Veterans spurred Congress to pass a new law that would protect disabled air travelers, the ACAA.[118] The passage of the ACAA in 1986 predated that of the ADA in 1990, making it one of the first legal measures to protect people with disabilities in air travel. The ACAA has provided some protections, since it gives agencies rulemaking authority in air travel. Per the ACAA, air carriers doing business with the United States, including foreign air carriers, cannot discriminate against individuals with physical or mental impairments.[119] The statute supplies the DOT with authority to promulgate and enforce regulations to prevent such discrimination.[120]

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114. Section 504, Rehabilitation Act of 1973, 29 U.S.C. § 794 (1973) (only applies to federally funded spaces and programs).

115. *Id.*

116. *Paralyzed Veterans*, 477 U.S. at 611.

117. 42 U.S.C. §§ 12181(7), 12181(10) (describing public accommodations and transportation covered by the statute).

118. *Enhancing Consumer Protections and Connectivity in Air Transportation: Hearing Before the S. Comm. on Comm., Sci., and Transp.*, 118th Cong. 1 (2023) (statement of Heather Ansley, Assoc. Dir. Gov't Rel., Paralyzed Veterans of America), https://www.commerce.senate.gov/services/files/81C6D621-6A51-445B-928B-9776B211EAF3 [https://perma.cc/4Z5K-D97M] ("PVA led the advocacy efforts for passage of the law based on the experiences our members encountered while traveling by air . . .").

119. 49 U.S.C. § 41705(c)1; 14 C.F.R Part 382.

120. 49 U.S.C. § 40113(a) (providing the Department of Transportation with rulemaking authority needed to effectuate laws); U.S.C. § 41705(c)1; (a)–(b)

These regulations require airlines to provide assistance at airports and on aircrafts, such as seating accommodations and accessible aircraft features.[121] Airlines are also responsible for providing wheelchair assistance when a passenger self-identifies as needing assistance at the airport.[122] Depending on the airport and operational structure, this service could be provided by either the airline, a specialized third-party contractor, or through special arrangements with the airport.[123]

While the ACAA facilitates some regulatory protections, those protections have not required expeditious change. For instance, in 2023, the DOT announced a new rule that requires airline lavatories to be more accessible pursuant to rule-making authority conferred by the ACAA. Lavatories on new single-aisle aircraft must be "large enough to permit a passenger with a disability and attendant, both equivalent in size to a 95th percentile male, to approach, enter, and maneuver within as necessary to use the aircraft lavatory."[124] While this is progress, these provisions do not go into effect until 2033—leaving passengers with disabilities without recourse in the meantime.[125]

Because the ADA and Rehabilitation Act fail to cover air travel, the ACAA is the most relevant statute to protect the rights of

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(enabling the Secretary of the Department of Transportation to investigate disability-related complaints within 120 days and to provide both the complainant and the (foreign) air carrier a written determination detailing whether a violation occurred, the underlying facts, and any actions the Secretary will take).

121. *Id.* § 41705(c); *About the Air Carrier Access Act*, *supra* note 29.

122. *Wheelchair and Guided Assistance*, U.S. DEP'T OF TRANSP. (Sep. 25, 2025), https://www.transportation.gov/individuals/aviation-consumer-protection/wheelchair-and-guided-assistance [https://perma.cc/U6KU-DR5N].

123. John Morris, *Scapegoating: Airlines, Contractors & Disabled Passengers*, WHEELCHAIR TRAVEL (July 23, 2018), https://wheelchairtravel.org/scapegoating-airlines-contractors-disabled-passengers [https://perma.cc/4KYB-W35A].

124. *U.S. Department of Transportation Requires Airline Lavatories*, *supra* note 68; 14 C.F.R. § 382.64; *see also* WEBER, *supra* note 24, at 240 ("For new single-aisle aircraft[s] that seat 125 or more passengers, there must be at least one accessible lavatory that can fit someone with a disability as well as an attendant.").

125. 14 C.F.R. § 382.64 (c) ("As a carrier, you must comply with the requirements of this section with respect to new aircraft that you operate that were originally ordered after October 3, 2033, or delivered after October 2, 2035, or are part of a new type-certificated design filed with the FAA or a foreign carrier's safety authority after October 2, 2024.").

passengers with disabilities. Theoretically, the ACAA should ensure that passengers with disabilities receive consistent and nondiscriminatory treatment—but it falls short because it has no private right of action to motivate change.

A. No Private Right of Action

The reasoning in *Alexander v. Sandoval* (2001) has led courts to conclude, in *Love v. Delta Airlines* (2002) and *Lopez v. JetBlue Airways* (2011), that the ACAA implies no private right of action. As a result, courts' interpretations of the law have not kept pace with the times. This section describes that the reasoning of these cases is seriously flawed and that courts should not base a finding of no private right of action in the ACAA on these cases.

In 2001, *Alexander v. Sandoval* established that an expressed private right of action to enforce federal law must be created by Congress.[126] The U.S. Supreme Court reasoned that private individuals cannot enforce disparate-impact regulations under Title VI because such rights of enforcement must be explicitly granted by Congress.[127] The Court carefully examined the structure and language of the statute, focusing on Sections 601 and 602. The Court noted that Section 601 clearly prohibits intentional discrimination and explicitly authorizes private individuals to sue for violations of this prohibition.[128] However, according to the Court, Section 602 gives federal agencies the authority to implement and enforce Title VI through regulations[129] but does not include language indicating that it creates individual private rights. The Court emphasized that private rights of action are created by Congress in the statutes themselves, not through administrative regulations that interpret or carry out those statutes.[130] Regulations issued under Section 602 are meant to help enforce existing rights,[131] not to create new rights that

126. Alexander v. Sandoval, 532 U.S. 275, 285 (2001) (stating that in ascertaining whether a private right of action exists, "[t]he judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy" and to this end, "[s]tatutory intent . . . is determinative. . . . [w]ithout it, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute.").

127. *Sandoval*, 532 U.S. at 276.

128. *Id.* at 279.

129. *Id.* at 278.

130. *Id.* at 286–87.

131. *Id.* at 292.

individuals can enforce on their own. Because the regulations lack "rights-creating" language[132] and are designed as interpretive tools, the Court concluded that courts cannot infer private enforcement rights[133] for those regulations unless Congress explicitly grants them. Therefore, without clear congressional intent,[134] private individuals cannot bring lawsuits to enforce the regulations that prohibit conduct with a discriminatory effect (disparate impact). The Court reversed the lower courts' decisions[135] and reaffirmed that enforcement of such regulations is solely through administrative and federal agency procedures, not private lawsuits. Thus, individuals do not have a private right to sue airlines for disparate impact discrimination under the ACAA.

The ruling in *Alexander v. Sandoval* limits the scope of private enforcement and ignores the broader legislative context.[136] It ignores the precedent set in *Lau v. Nichols*[137] and *Guardians Association v. Civil Service Commission of the City of New York* [138] by preventing the use of Title VI regulations that have a discriminatory effect, leaving enforcement to federal agencies. While the Court emphasized the text and structure of Sections 601 and 602, it overlooked the broader legislative history and longstanding practice of recognizing private rights of action in civil rights statutes.[139]

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132. *Id.* at 288.

133. *Id.* at 286–87.

134. *Id.* at 286.

135. *Id.* at 293.

136. *Id.* at 291 ("Both the Government and respondents argue that the *regulations* contain rights-creating language and so must be privately enforceable . . . but that argument skips an analytical step. Language in a regulation may invoke a private right of action that Congress through statutory text created, but it may not create a right that Congress has not."); *see also* Touche Ross & Co. v. Redington, 442 U.S. 560, 577 n.18 ("[T]he language of the statute and not the rules must control."). Thus, when a statute has provided a general authorization for private enforcement of regulations, it is possible that the intent displayed in each regulation can determine whether or not it is privately enforceable. But it is most certainly incorrect to say that language in a regulation can conjure up a private cause of action that has not been authorized by Congress. Agencies may play the sorcerer's apprentice but not the sorcerer himself.

137. Lau v. Nichols, 414 U.S. 563, 568–69 (1974) (holding, unanimously, that the lack of supplemental language instruction in public school for students with limited English proficiency violated the Civil Rights Act of 1964)

138. Guardians Assoc. v. Civil Serv. Comm'n, 463 U.S. 582, 582 (1983) (holding that disparate-impact violations under Title VI regulations are actionable)

139. *See* Cannon v. Univ. of Chicago, 441 U.S. 677, 709 (1979) (recognizing an implied private right of action under Title IX to enforce gender-discrimination

Congress has historically enacted statutes with implied private rights of action to ensure effective enforcement of civil rights protections. Courts have traditionally inferred such rights to prevent discrimination and to give substantive effect to civil rights laws, especially where administrative enforcement alone may be insufficient.

The Court's reasoning assumes that regulations issued under Section 602 are merely interpretive and lack independent enforceability unless explicitly granted private rights. However, these regulations are essential tools to achieve the statutory goal of preventing discrimination, including conduct with a discriminatory effect. Treating them as non-enforceable unless explicitly authorized by Congress diminishes their importance and undermines the statutory scheme's effectiveness.

Administrative regulations often serve to clarify, implement, or expand protections originally granted by Congress. Historically, courts have recognized that regulations with "rights-creating" language that aim to effectuate statutory goals can themselves support private enforcement actions.[140] The Court in *Sandoval* fails to adequately consider that regulations can embody private rights when they are designed to fill gaps in statutory protections—especially for complex issues like discrimination with a disparate impact.

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prohibitions in federally funded education programs); *Lau*, 414 U.S. at 568–69 (upholding private enforcement of Title VI/regulatory obligations against federally funded school systems for practices producing a disparate racial impact); Newman v. Piggie Park Enter., 390 U.S. 400, 402 (1968) (enforcing private suits under Title II, including awarding attorney's fees to private plaintiffs who vindicate public civil-rights policies); Runyon v. McCrary, 427 U.S. 160, 161–62 (1976) (holding that § 1981 bars private racial discrimination in private schools and supports private damages actions to redress such discrimination); Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 236 (1969) (recognizing private damages remedy under 42 U.S.C. § 1982 for racial discrimination in property-related transactions and rights); Monell v. Dep't. of Soc. Serv., 436 U.S. 658, 659 (1978) (confirming private § 1983 suits against local governments for constitutional and statutory violations by municipal policy or custom); Maine v. Thiboutot, 448 U.S. 1, 9 (1980) (holding that § 1983 can be used to enforce federal statutory rights, enabling private damages suits for deprivation of such rights).

140. *Sandoval*, 532 U.S. at 291 ("Both the Government and respondents argue that the *regulations* contain rights-creating language and so must be privately enforceable, but that argument skips an analytical step. Language in a regulation may invoke a private right of action that Congress through statutory text created, but it may not create a right that Congress has not.") (citation omitted).

Scholars emphasize that civil rights statutes, by their nature, are intended to be enforceable both administratively and privately.[141] DOT claims they investigate every Civil Right Complaint[142] but this is not always successful. Complainants find relying solely on administrative agencies ineffective, particularly when they lack resources to handle a high volume of complaints and investigate every individual case. As a result, agency enforcement actions do not comply with safety regulations.[143] Therefore, the Court's ruling might make current protections ineffective by denying individuals the ability to directly enforce anti-discrimination regulations—particularly when the regulations are widely accepted as integral to the statutory purpose.

Although the Court emphasized legislative silence or absence of explicit language,[144] subsequent amendments and legislative history suggest that Congress intended private enforcement for protections against discrimination, including under regulations related to disparate impact. Courts consistently infer private rights where necessary to achieve statutory objectives, such as recognition of the objective in related statutes. This practice challenges the Court's narrow view.

In the end, the reasoning in *Alexander v. Sandoval* is not sound because it excessively restricts the role of regulations in

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141. George Rutherglen, *Private Rights and Private Actions: The Legacy of Civil Rights in the Enforcement of Title VII*, 95 B.U. L. REV. 733, 757 (2015) (arguing that Title VII's enforcement should reflect the civil-rights tradition of individual private rights rooted in Reconstruction and common-law origins, critiquing expansive administrative enforcement of Title VII (EEOC/NLRB models), and advocating for mixed reforms to improve selection and resolution of discrimination claims).

142. *File a Consumer Complaint*, U.S. DEP'T OF TRANSP. (Aug. 1, 2025), https://www.transportation.gov/airconsumer/file-consumer-complaint [https://perma.cc/CP67-AUWY].

143. *See, e.g.*, U.S. DEP'T OF TRANSP., REP. NO. PT2022007, DOT'S TOP MANAGEMENT CHALLENGES 6 (2021), https://www.oig.dot.gov/sites/default/files/DOT%20FY%202022%20Top%20Management%20Challenges.pdf [https://perma.cc/SLM5-FK7B] ("Our work has shown that FAA's oversight structure is not keeping pace with these system requirements. Last year, we reported that FAA inspectors for Southwest Airlines were not evaluating air carrier risk assessments or safety culture—key components of SMS. Yet, FAA used the air carrier's SMS risk assessments to justify continued non-compliance with safety regulations.").

144. *Sandoval*, 532 U.S. at 293 ("Neither as originally enacted nor as later amended does Title VI display an intent to create a freestanding private right of action to enforce regulations promulgated under § 602.").

enforcing civil rights protections, ignoring the legislative history, the functional importance of regulations in achieving statutory goals, and the long-standing practice of judicial inference of private rights to ensure effective civil rights enforcement. By limiting enforceability solely to explicit statutory language, the Court undermines the broader purpose of civil rights laws and risks leaving vulnerable populations without effective means of redress.

For instance, the Secretary of Transportation has broad authority to enforce compliance with the ACAA through various means. This includes ultimate responsibility for facilitating the filing of complaints made by passengers regarding airline practices that violate the ACAA, investigating such complaints, providing written determinations, and imposing penalties or fines. The DOT also publishes a monthly Air Travel Consumer Report.[145] The Secretary of Transportation can also promote awareness and provide training resources to airlines to help prevent discrimination. These are all mechanisms that the DOT can and has used, yet people with disabilities still experience constructed exclusion, indicating that these measures do not seem to be enough and highlighting the importance of a private right of action.

The *Sandoval* holding has prevented numerous disabled passengers from receiving compensation and holding airlines accountable for violations of the ACAA. Soon after *Sandoval*, the Eleventh Circuit followed suit in *Love v. Delta Air Lines*.[146] The case involved a disabled passenger, Cynthia Love, who sued Delta Air Lines for discrimination under the ACAA.[147] The main legal question was whether the ACAA implied a private right of action—that is, whether individuals like Love could sue in federal court to enforce the law.[148] The district court initially held that while the law implied a private right, only injunctive and declaratory relief were permitted, not monetary damages.[149] The Eleventh Circuit, however, reversed

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145. *See, e.g.*, *Air Travel Consumer Reports*, U.S. DEP'T OF TRANSP., https://www.transportation.gov/individuals/aviation-consumer-protection/air-travel-consumer-reports [https://perma.cc/J5NH-4P9B] (last updated Jan. 13, 2026).

146. Love v. Delta Air Lines, 310 F.3d 1347 (11th Cir. 2002) (holding that the ACAA does not create an implied private right of action in federal district court and that law's sole enforcement mechanism is DOT administrative proceedings with review in the courts of appeals).

147. *Id.* at 1350.

148. *Id.* at 1349.

149. *Id.* at 1351.

that decision, concluding that Congress did not intend to create any private cause of action in federal court under the ACAA.[150]

The Eleventh Circuit embraced the ruling in *Sandoval*, writing that private rights of action must be explicitly created by Congress under federal law.[151] It emphasized that the statutory text and structure are critical in determining whether such a right exists,[152] and found that the ACAA's language and comprehensive enforcement scheme indicate Congress did not contemplate private lawsuits in federal court.[153] The Court explained that legislative history and regulations cannot override the clear language and structure of the statute when those elements do not support the existence of a private right.[154] *Love* followed *Sandoval* because the Eleventh Circuit grounded its decision in well-established legal principles about statutory interpretation—namely, that Congress must explicitly create private rights of action.[155]

Then, in *Lopez v. Jet Blue Airways*, the airline failed to provide wheelchair accommodation in a timely manner to the plaintiff, who required wheelchair assistance for her reflex sympathetic dystrophy disability.[156] The airline's failure caused the Plaintiff, Mary Lopez, to experience pain and swelling in her foot, as well as mental anguish that led to anxiety and nightmares.[157] Lopez filed a complaint with the DOT, which concluded that JetBlue had violated the federal regulation requiring air carriers to "promptly provide or ensure the provision of assistance requested by or on behalf of passengers with a disability."[158]

The plaintiff also filed a *pro se* complaint in U.S. District Court.[159] The plaintiff alleged that JetBlue violated the ACAA provisions that prohibit discrimination on the basis of disability, particularly by providing accessible services and accommodations for passengers with disabilities. The two main issues before the court

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150. *Id.* at 1360.
151. *Id.*
152. *Id.* at 1352–53.
153. *Id.*
154. *Id.* at 1353.
155. *See id.* at 1352 (citing Alexander v. Sandoval, 532 U.S. 275, 288 (2001)) ("First and foremost, we look to the statutory text for rights-creating language." (internal quotation omitted)).
156. Lopez v. Jet Blue Airways, 662 F.3d 593, 595 (2d Cir. 2011).
157. *Id.*
158. *Id.* (citing 14 C.F.R. § 382.95(a)).
159. *Id.*

were: (1) whether the ACAA "provides a private cause of action against air carriers for disability discrimination," and 2) whether Title III of the ADA "excludes air carriers from liability for discrimination in the provision of services in airport terminals used primarily to facilitate air transportation."[160] The District Court dismissed the complaint.[161] The Second Circuit reviewed the dismissal and affirmed the decision of the lower court, concluding that neither the ACAA nor the ADA could be invoked to provide the necessary remedies for the plaintiff.[162]

For the first issue, the court concluded that, while the complaint asserted that the conduct by JetBlue violated the ACAA, the law does not expressly provide a private right of action against an air carrier.[163] By not allowing this action, the court then deferred to other enforcement means. For the second issue, the court ruled that the plaintiff did not have a claim under the ADA[164] because the discrimination occurred in services related to air transportation. The discrimination was outside the "full and equal enjoyment of specific public transportation services;" thus, the ADA did not apply.[165]

Because the ACAA provides no private right of action, there is an expanding gap between the intent of the ACAA to prevent discrimination and the actual service provided in air travel, which creates the constructed exclusion of people with disabilities.

B. Legal Limitations: Not a Place of Public Accommodations

Without a private right of action available in the ACAA, people with disabilities seeking to prevent or rectify discrimination in air travel might look to the ADA. However, the ADA covers discrimination against disabled people in only a set of contexts, the most relevant being businesses considered public accommodations. Therefore, the first major obstacle for litigants seeking to use the ADA to remedy discrimination against disabled passengers is that

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160. *Id.*
161. *Id*. at 596.
162. *Id*. at 596, 598–600.
163. *Id.* ("Nevertheless, the ACAA does not expressly provide a private cause of action against an air carrier for violation of its terms, and the question presented, therefore, is whether a private right of action should be 'implied.'"); *see also* Alexander v. Sandoval, 532 U.S. 275, 286 (2001) ("Without [statutory intent], a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute.").
164. *Lopez*, 662 F.3d at 594.
165. *Id.* at 598.

airports and aircraft are not treated as places of public accommodation, although their terminals and their businesses are. The second major problem is that courts are split on whether to treat websites as places of public accommodation.

First, airports and aircrafts should be treated as places of public accommodation. Although the Civil Rights Act of 1964 did not include people with disabilities as a protected class, people with disabilities use the ADA to protect their rights against discrimination. It is clear that Congress intended to promote a "comprehensive view of the concept of discrimination advanced in the ADA."[166] Under a public accommodations law, places of public accommodation must provide full and equal enjoyment of their goods, services, and facilities.[167] Framed differently, places of public accommodation may not constructively exclude people with disabilities by effectively telling them to go elsewhere. Public accommodation laws "are designed to ensure access to the world of the market without regard to invidious discrimination."[168] Because aircrafts are not considered places of public accommodation under the ADA, and despite the mechanisms in place for enforcing the ACAA, a private right of action is sorely needed to rectify the lingering issues of constructed exclusion.

Second, doctrine should expand to acknowledge that airline websites are public accommodations. The courts have debated the exact scope of which websites are places of public accommodation.[169]

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166. Jamelia N. Morgan, *The Paradox of Inclusion: Applying* Olmstead*'s Integration Mandate in Prisons*, 27 GEO. J. ON POVERTY L. & POL'Y 305, 306 (2020) (discussing *Olmstead v. L.C.*, where the U.S. Supreme Court ruled that unjustified institutionalization constitutes discrimination under Title II of the ADA).

167. 42 U.S.C. § 12182(a).

168. Singer, *supra* note 89, at 939 (describing the incompatibility of market theory with public accommodation law).

169. *See, e.g.*, Nat'l Fed'n of the Blind v. Target Corp., 452 F. Supp. 2d 946, 952 (N.D. Cal. 2006) (explaining that the Ninth Circuit has declined to join those circuits which have suggested that a "place of public accommodation" may have a more expansive meaning); Gil v. Winn-Dixie Stores, Inc., 993 F.3d 1266 (S.D. Fla.), *vacated*, 21 F.4th 775 (11th Cir. 2021) (finding that defendant's limited-use website did not violate Title III of the ADA by operating as an "intangible barrier" to accessing the goods, services, privileges, or advantages of its physical stores, even though the website was incompatible with auxiliary aids such as screen reader software); Access Now, Inc. v. Blue Apron, LLC, No. 17-CV-116-JL, 2017 WL 5186354, at *1 (D.N.H. Nov. 8, 2017) (considering whether defendant Blue Apron's website constitutes a "public accommodation" under Title III of the ADA);

In a Ninth Circuit case, *Robles v. Domino's Pizza*, the court held the ADA applies to Domino's website and app because they are the primary means by which customers access the goods/services of Domino's physical restaurants, which are places of public accommodation.[170]

On the other hand, although airlines should, in theory, treat their websites as places of public accommodation because they sell a service, airline tickets. *Access Now v. Southwest Airlines*, the case most closely analogous to air travel, emphasized that the ADA covers only physical, concrete places of public accommodation.[171] The court's analysis relied heavily on the statute's plain language, which defines "public accommodations" as tangible structures like hotels, restaurants, theaters, stores, and other physical venues.[172] Because the website in question in that case—southwest.com—exists only in cyberspace and lacks a direct nexus to a physical location, the court concluded that it does not fall within the law's current definition.[173] This highlights a significant problem: the law's framework does not account for the reality of internet-based services, which are increasingly relevant in today's world.[174]

Robles v. Domino's Pizza, LLC*,* 913 F.3d 898, 905–06 (9th Cir. 2019) (finding that the ADA applies to the Domino's website and app).

170. *Robles,* 913 F.3d at 904; *see Guidance on Web Accessibility and the ADA*, U.S. DEP'T OF JUST. (Mar. 18, 2022), https://www.ada.gov/resources/web-guidance/ [https://perma.cc/G7FR-7E9T] [hereinafter *Guidance on Web Accessibility*] (providing guidance on web accessibility principles for websites); *see also Justice Department Issues Web Accessibility Guidance Under the Americans with Disabilities Act*, U.S. DEP'T OF JUST. (Mar. 18, 2022), https://www.justice.gov/archives/opa/pr/justice-department-issues-web-accessibility-guidance-under-americans-disabilities-act [https://perma.cc/SSJ2-4A92] [hereinafter *Justice Department Issues Web Accessibility Guidance*] (announcing the web accessibility guidelines).

171. Access Now v. Southwest Airlines, 227 F. Supp. 2d 1312, 1318 (S.D. Fla. 2002).

172. *See id*. at 1317–18 (beginning with the plain language of the ADA, which enumerates hotels, restaurants, theaters, stores, etc. as "places of public accommodation"); *see also* 28 C.F.R. § 36.104 (definition of "facility").

173. *Id.* at 1317–18.

174. Courts recognize a website as a place of public accommodation if it is the primary service or if the goods and services they provide in a physical location are places of public accommodation recognized under the law. *See, e.g.*, National Ass'n of the Deaf v. Netflix, Inc., 869 F. Supp. 2d 196, 201 (D. Mass. 2012) (explaining that websites can qualify under several enumerated categories under the ADA such as "service establishment[s]" or "place[s] of exhibition or entertainment"); Rendon v. Valleycrest Prods., Ltd., 294 F.3d 1279, 1283 (11th Cir. 2002) (explaining that the ADA prohibits discrimination via intangible

Consequently, the court's decision underscores that relying solely on the existing legal standards limits protections for disabled individuals in digital spaces.[175] It reveals a gap where, despite the importance of internet accessibility, the law does not yet recognize virtual environments as places of public accommodation.[176] This contributes to ongoing challenges in using the law to prevent discrimination in online contexts, as legal protections remain tied to physical spaces, leaving many disabled internet users unprotected until Congress explicitly expands the law's language.

Regardless, airline services begin when passengers book a flight, either in person, online, or on the phone, and end when they arrive at their destination. Thus, good business practices that neither discriminate nor exclude begin with accessible websites and a mindful staff. The U.S. Department of Justice (DOJ) has consistently stated that websites are places of public accommodation, even if the site does not have a physical nexus, but this clearly has not been enough.[177] Unfortunately, while the DOJ may be influential, the courts must follow case law, which is still unsettled on this issue.

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barriers that restrict one's ability to access the services in a place of public accommodation); Nat'l Fed'n of the Blind v. Scribd Inc., 97 F. Supp. 3d 565, 575 (D. Vt. 2015) (affirming a broad interpretation of the ADA to prohibit discrimination via the Internet); *Robles*, 913 F.3d at 905 (holding that the ADA applies to a restaurant's website and app); *Target Corp.*, 452 F. Supp. 2d at 953 (holding that the ADA applied to Target.com); *Blue Apron*, 2017 WL 5186354, at *10 (holding that an online grocery service is subject to the ADA).

175. Section 508, an amendment to the Rehabilitation Act of 1973 mandates that federal agencies make their electronic and information technologies accessible, but it does not apply to public spaces. 29 U.S.C. § 794(d).

176. The Department of Justice has interpreted the ADA to cover digital services as places of public accommodation and generally looks to the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA. *See* World Wide Web Consortium, *Web Content Accessibility Guidelines (WCAG) 2.1*, W3C (May 6, 2025), https://www.w3.org/TR/WCAG21/. However, there is no specific standard in the law, and DOJ enforcement depends on the priorities of the current administration.

177. *Guidance on Web Accessibility*, *supra* note 170 ("Inaccessible web content means that people with disabilities are denied equal access to information. An inaccessible website can exclude people just as much as steps at an entrance to a physical location. Ensuring web accessibility for people with disabilities is a priority for the Department of Justice."); *see also Justice Department Issues Web Accessibility Guidance*, *supra* note 170 ("The guidance discusses a range of topics, including the importance of web accessibility, barriers that inaccessible websites create for some people with disabilities, when the ADA requires web content to be accessible, tips on making web content accessible and other information and resources.").

Under the ACAA, airlines must make their primary website accessible because people with disabilities have a right to receive information in an accessible format in accordance with the Airline Passengers with Disabilities Bill of Rights.[178] For instance, in 2023, Air Choice One was reported as having an inaccessible website.[179] Issues especially arise with Alt Text and Captions, Forms and Buttons, and Color Contrast.[180] Perhaps all airlines will make their websites accessible after the Justice Department announced the publication of the final rule to strengthen web and mobile app access for people with disabilities in 2024.[181] Had there been a private right of action, the DOJ would not have needed to intervene because the threat of a lawsuit would have motivated all airlines to more readily comply.

Attempting to establish that websites are places of public accommodation under Title III of the ADA, the DOJ has filed lawsuits against non-airline companies with inaccessible websites, such as Winn-Dixie, Blue Apron, and Domino's Pizza.[182] This ongoing debate should end, and airports, airlines, and their websites should be considered public accommodations, which would establish a private

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178. 14 C.F.R. §§ 382.43, .53, .57, .119, .14; *see Airline Passengers with Disabilities Bill of Rights*, U.S. DEP'T OF TRANSP., https://www.transportation.gov/airconsumer/disabilitybillofrights [https://perma.cc/7ER7-2LGY] (last updated Feb. 5, 2025) (enumerating, thirdly, the "Right to Receive Information in an Accessible Format").

179. Adam Akinyemi, *Examples of ADA Compliant Websites (and some that are not)*, WHOISACCESSIBLE.COM (Oct. 2, 2025), https://whoisaccessible.com/guidelines/inspection-of-a-few-ada-compliant-websites-and-some-that-are-not/ [https://perma.cc/4R9N-BETP].

180. *Id*.

181. Press Release, U.S. Dep't of Just., Justice Department to Publish Final Rule to Strengthen Web and Mobile App Access for People with Disabilities (Apr. 8, 2024), https://www.justice.gov/archives/opa/pr/justice-department-publish-final-rule-strengthen-web-and-mobile-app-access-people [https://perma.cc/L46J-J3GW].

182. Gil v. Winn-Dixie Stores, Inc., 993 F.3d 1266 (S.D. Fla.), *vacated*, 21 F.4th 775 (11th Cir. 2021) (holding that the defendant's limited-use website did not violate Title III of the ADA by operating as an "intangible barrier" to accessing goods, services, privileges, or advantages of physical stores, even though website was incompatible with auxiliary aids such as screen reader software); *see also* Access Now, Inc. v. Blue Apron, LLC, No. 17-CV-116-JL, 2017 WL 5186354, at *1 (D.N.H. Nov. 8, 2017) (considering whether defendant Blue Apron's website, www.blueapron.com, constitutes a "public accommodation" under Title III of the Americans with Disabilities Act (ADA)); *see also* Robles v. Domino's Pizza, LLC, 913 F.3d 898, 902 (9th Cir. 2019) (determining that the ADA applies to the Dominos website and app).

right of action under the ADA with respect to companies involved in air travel. This view already has buy-in from the public, with nine out of ten Americans believing it is important for airlines to improve accommodations for passengers with disabilities.[183]

This section has shown that the current statutory avenues available to litigants are inadequate to solve the problem of discrimination in air travel. Since *PVA* narrowly interpreted Section 504 of the Rehab Act, holding that it does not automatically apply to commercial airlines, and *Lopez* upheld that airports and aircrafts are not places of public accommodation under the ADA, this leaves injured parties without legal recourse for discrimination outside of the ACAA. Because courts have erroneously held that the ACAA implies no private right of action,[184] litigants are without substantive legal recourse, and without much bargaining power. The end result is that airports and airlines have no real incentive to be more inclusive of people with disabilities in air travel, and thus the constructed exclusion persists.

PART III. THE RIGHT TO TRAVEL

"You know there are no ADA laws in the sky?"
– Engracia Figueroa

Imagine entering a restaurant and being told, "We don't serve your kind here."[185] One would think these attitudes were a thing of the past, given the gains made with the Civil Rights movement and the ADA. But just as people of color have fought for their civil rights, so too have people with disabilities. While these two categories may overlap and vary widely, neither is uniform. People's disabilities are experienced with other identities (race, gender, class, language, immigration status, etc.), and apparent vs. non-apparent disability is only one axis among many; disclosure choices, stigma, and impacts differ within and across groups.[186] Individuals occupy multiple, intersecting positions that shape how exclusion and harm are

183. *Americans Agree, Air Travel Should Be More Accessible for Disabled Passengers*, THE CENTURY FOUND., (Apr. 3, 2024), https://tcf.org/content/commentary/americans-agree-air-travel-should-be-more-accessible-for-disabled-passengers/ [https://perma.cc/VGQ6-FURP].

184. Lopez v. Jet Blue Airways, 662 F.3d 593, 600 (2d Cir. 2011) (holding there is no private right of action under the ACAA).

185. Singer, *supra* note 89, at 937 (explaining the dynamics of public accommodations law).

186. Goffman, *supra* note 78, at 133.

experienced and enforced. People with disabilities experience a constructed exclusion, essentially told, "We don't have to serve your kind here if we don't want to, because who is going to make us?"

The use of a constitutional right to travel—an unenumerated fundamental right[187]—may have more legal bite in the near future as federal funding increases to airports through the federal Airport Improvement Program (AIP),[188] akin to state actors funding highways, and as aircraft become even more commonplace for interstate travel, unrestricted by economic challenges. The following section will explore the plausible right to be free from discrimination in air travel.

A. Right to Travel (Freedom of Movement)

The constitutional right to travel both within and between states is well-established through the following series of cases.[189] First, in *Edwards v. California*, the U.S. Supreme Court recognized that the transportation of persons falls within the scope of interstate commerce,[190] a domain exclusively regulated by Congress.[191] While states retain police powers over local matters, such powers do not extend to barriers that impose an unconstitutional burden on interstate movement.[192] The Court found that a California law, which aimed to restrict the influx of indigent migrants, constituted such a barrier and was therefore invalid.[193] The Court highlighted that the

187. *See* United States v. Guest, 383 U.S. 745, 757 (1966) ("The District Court was in error in dismissing the indictment as to this paragraph. The constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union."); *see also* Shapiro v. Thompson, 394 U.S. 618, 643 (1969) (Stewart, J., concurring) ("As we made clear in *Guest*, [the fundamental right to travel] is a right broadly assertable against private interference as well as governmental action.").

188. *Airport Improvement Program (AIP)*, FED. AVIATION ADMIN., https://www.faa.gov/airports/aip [https://perma.cc/K33H-WR6V] (last updated July 8, 2025) (noting that the AIP program provides grants to public agencies—and, in some cases, to private owners and entities—for the planning and development of public-use airports that are included in the National Plan of Integrated Airports Systems (NPIAS)).

189. Smith-Drelich, *supra* note 13, at 814 ("The fundamental right . . . extends substantially beyond protecting only interstate travel.").

190. Edwards v. California, 314 U.S 160, 172 (1941).

191. *Id.* at 176.

192. *Id.* at 173.

193. *Id*. (finding that the law was "an unconstitutional barrier to interstate commerce").

right to move freely across state lines is a fundamental incident of national citizenship protected by the privileges and immunities clause of the Fourteenth Amendment.[194] This implied right is critical to the concept of equal citizenship, and state law cannot easily curtail the right solely based on economic status.[195]

Next, *United States v. Guest* dealt with the right to travel and the enforcement of civil rights.[196] In 1964, three members of the Ku Klux Klan shot and killed Lieutenant Colonel Lemuel Penn while he was driving home from Washington, D.C.[197] An all-White jury acquitted the three alleged shooters.[198] They were later indicted on conspiracy to threaten, abuse, and kill African Americans, together with three alleged co-conspirators.[199] A criminal conspiracy is defined as "two or more persons conspir[ing] to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States."[200] The indictment accused all six conspirators of acting to deny African Americans full and equal enjoyment and utilization of goods and services, including access to state highways and free travel to and from Georgia on public streets.[201]

The defendants moved to dismiss the indictment, arguing that it did not allege a specific denial of rights under the law, and the district court agreed with the defendants.[202] On appeal, the prosecution argued that the indictment alleged, in part, a denial of rights under the Equal Protection Clause of the Fourteenth Amendment.[203] In an eight-to-one decision, the court held that a

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194. *Id.* at 178.

195. *Id.* at 181.

196. United States v. Guest, 383 U.S. 745, 758–60 (1966) (reversing the acquittal of a group of individuals who were charged with violating federal laws by conspiring to interfere with the civil rights of African Americans attempting to exercise their right to travel and engage freely in public life).

197. *Id*. at 761 n.1; *see also* United States v. Guest, 246 F. Supp. 475, 487 (M.D. Ga. 1965), *aff'd*, 383 U.S. 745 (1966).

198. *Guest*, 383 U.S. at 760; *Lt. Col. Lemuel Penn*, THE GEORGIA CIVIL RIGHTS COLD CASES PROJECT, https://coldcases.emory.edu/lt-col-lemuel-penn/ [https://perma.cc/D9HQ-6T2R] (explaining that an all-White jury acquitted two of the accused shooters).

199. *Guest*, 383 U.S. at 746–49, 761 n.1.

200. *Id*. at 747; 18 U.S.C. § 371.

201. *Guest*, 383 U.S. at 757.

202. *Guest*, 246 F. Supp. at 487.

203. *Guest*, 383 U.S. at 747 n.1, 748–49 (affirming that the right to travel between states is a fundamental constitutional right, protected independently by the Commerce Clause and the Privileges and Immunities Clause of the U.S.

criminal conspiracy affecting an individual's right of free interstate passage violated the law, citing to 18 U.S.C. § 241, which criminalizes conspiracies to deprive individuals of federally protected rights; however, this only applies when there is state action or official involvement.[204] The Court reasoned that the right to travel is a right "arising under" the Constitution, and therefore, a conspiracy to obstruct that right, falls within the statutory scope of § 241 if it involves state action or complicity.[205] The Court expressed skepticism that § 241 could be constitutionally applied to private conspiracies without state involvement, because the right to travel is not explicitly a constitutional right protected against private interference.[206]

Then, in *Shapiro* v. *Thompson*, the Court also explicitly recognized the freedom to travel as an unenumerated right in the United States.[207] Thompson was a pregnant nineteen-year-old mother who already had a dependent child.[208] Although she was originally from Massachusetts, she applied for Aid to Families with Dependent Children (AFDC) in Connecticut. The state of Connecticut denied her aid because she did not satisfy the state's one-year residency requirement.[209] The Court reasoned that, because the regulation touched "on the fundamental right of interstate movement," it must promote a compelling state interest.[210] The Court concluded that Connecticut failed to state such a compelling state interest,[211] finding that deterring indigent individuals from moving was unconstitutional[212] and against the value historically placed on the freedom of travel. This decision established the principle that the right to travel is an essential liberty deserving of protection.

Constitution); *see also* United States v. Price, 383 U.S. 787, 792–93 (1966) (sustaining the lower court's finding that conspiracy to arrest, detain, and murder violated the victims' rights under the Due Process Clause of the Fourteenth Amendment); *Guest,* 383 U.S. at 759 ("It is also well settled in our decisions that the federal commerce power authorizes Congress to legislate for the protection of individuals from violations of civil rights that impinge on their free movement in interstate commerce."); United States v. Moore, 129 F. 630, 634 (C.C.N.D. Ala. 1904) (affirming that obstruction of movement is a violation of the Fourteenth Amendment and, therefore, punishable by law).

204. *Guest*, 383 U.S. at 759–60; 18 U.S.C. § 241.
205. *Guest*, 383 U.S. at 780.
206. *Id.* at 776.
207. Shapiro v. Thompson, 394 U.S. 618, 629–31 (1969).
208. *Id.* at 623.
209. *Id.*
210. *Id.* at 638.
211. *Id.*
212. *Id.* at 621.

Lastly, in *Saenz v. Roe*, the U.S. Supreme Court addressed the right to travel and the Privileges and Immunities Clause of the Fourteenth Amendment.[213] At issue was a California law that paid lower welfare benefits to residents who had lived in the state for less than twelve months.[214] The law required welfare recipients to receive the same benefits they were receiving in their previous state of residence.[215]

Brenda Roe, a California resident, filed a class action lawsuit.[216] The district court granted a preliminary injunction to stop the enforcement of the law, and the Ninth Circuit affirmed.[217] The U.S. Supreme Court then ruled in favor of Saenz, stating that the California law violated a plaintiff's right to travel by discriminating against new residents who had moved to California.[218] The Court found that the right to travel includes the right to be treated equally and not penalized for relocating to another state.[219] The decision reinforced the principle that states cannot impose residency requirements that unjustly restrict the benefits available to newcomers, thereby deterring people from relocating.[220] This case thereby protected the freedom to travel and settle in different states without facing discrimination.

Scholars have recognized that the right to travel is essential to individual liberty and mobility.[221] In *Kent v. Dulles*, the Court went

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213. Saenz v. Roe, 526 U.S. 489, 492 (1999).

214. *Id*. at 492–93.

215. *Id*.; *see* Cal. Welf. & Insts. Code § 11450.03.

216. *Saenz*, 526 U.S. at 492–93, 497 (noting respondents filed suit in the Eastern District of California and that the district court certified the case as a class action).

217. *Id.* at 493–95.

218. *Id.* at 498; *see also Shapiro*, 394 U.S. at 643 (Stewart, J., concurring) (articulating that the right to travel is so important it is "assertable against private interference as well as governmental action . . . a virtually unconditional personal right, guaranteed by the Constitution to us all.").

219. *Saenz*, 526 U.S. at 505.

220. This principle had been formerly established in *Edwards v. People of State of California*, where the U.S. Supreme Court ruled that a California law which made it a misdemeanor to knowingly bring or aid in bringing an "indigent person who is not a resident of the State" into California violated the Commerce Clause. 314 U.S 160, 166 (1941). This law was enacted in response to the large influx of Dust Bowl migrants who were seeking employment and a fresh start in California after being displaced by drought and economic difficulties. *See id*. at 167.

221. *See, e.g.*, Smith-Drelich, *supra* note 13, at 883 ("After all, free movement is more than an important facilitator of interstate commerce or one

so far as to say that the right to travel abroad is a liberty protected by the Due Process Clause of the Fifth Amendment.[222] These rulings affirm that restrictions or discriminatory practices impinging upon interstate travel—whether by private conspiracy, state law, or discriminatory benefits—are subject to constitutional scrutiny because they threaten core individual freedoms. When policymakers enact policies that effectively exclude individuals with disabilities—whether through inaccessible accommodations, unreasonable policies, or practices that deny access to travel—they are engaging in a form of constructed exclusion that undermines this fundamental right.

Just as laws that unjustly penalize new residents or discriminate based on race have been struck down to protect equal treatment and the right to move freely, policies that deny or severely restrict the ability of people with disabilities to travel violate their inherent right to participate fully in society. The lack of a private right of action under the ACAA keeps the constructed exclusion of people with disabilities who already file thousands of complaints with the DOT without any remedy, interfering with their constitutional right to interstate and intrastate travel.[223] However, in order for litigants to argue that a constitutional violation has occurred, a court would have to find that either the airports or the airlines rise to the level of a "state actor." The following section explains that such a finding is unlikely.

B. Barrier: Limited State Actor

Even if courts recognized that there is a constitutional right to air travel, that right likely would only attach to government conduct or private conduct that is closely tied to or endorsed by the

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means by which a state may discriminate against out-of-state residents; it is an essential component of liberty itself.").

222. *See* Kent v. Dulles, 357 U.S. 116, 126 (1958) ("Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for a livelihood."); *see also* Kashem v. Barr, 941 F.3d 358, 364–65 (9th Cir. 2019) (quoting Al Haramain Islamic Found., Inc. v. U.S. Dep't of Treasury, 686 F.3d 965, 980 (9th Cir. 2012)) ("Even when national security interests are at stake, moreover, the government must 'take reasonable measures to ensure basic fairness to the private party and . . . follow procedures reasonably designed to protect against erroneous deprivation of the private party's interests.'").

223. *See* Smith-Drelich, *supra* note 13, at 815 (arguing that the right to free movement is a constitutional right needing protection).

government, but not to purely private conduct.[224] Therefore, such a right, even applied to air travel, would not capture a significant amount of conduct related to air travel, including activities at privately owned airports.

In some cases, private entities that perform public functions—such as providing essential transportation services under government approval or regulation—may be considered "state actors."[225] Arguably, the federal government endorses and encourages commercial air travel through the Federal Aviation Administration, which creates safety standards to support commercial air travel, as well as providing federal funding to airports in the National Plan of Integrated Airport Systems (NPIAS) through the AIP program,[226] and thus renders commercial airlines "state actors." However, general funding and regulation alone are typically insufficient to qualify as a state actor, as demonstrated in the following case.

A business or private individual can rise to the level of a state actor through the Close Nexus Test established in *Jackson v. Metropolitan Edison Co*.[227] In this case, the U.S. Supreme Court addressed whether a private utility company's termination of service, without notice or a hearing, constituted "state action" subject to constitutional protections under the Fourteenth Amendment.[228] The Court held that it did not.[229] The Court reasoned that, despite the utility's regulation by the state and its possession of a certificate of public convenience issued by the Pennsylvania Public Utility Commission, the utility's actions were not sufficiently attributable to the state itself.[230] The Court emphasized that mere heavy regulation,

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224. *See infra* Part III.A. (describing the U.S. Supreme Court's development of the constitutional right to travel, which so far has extended only to government action).

225. *See* Marsh v. Alabama, 326 U.S. 501, 506 (1946) (holding that if a private entity controls a space that is open to the public and functions like a public thoroughfare, it cannot deny constitutional rights to those using that space); *see also* Lebron v. Nat'l R.R. Passenger Corp. 513 U.S. 374, 402 (1995).

226. *National Plan of Integrated Airport Systems (NPIAS)*, U.S. DEP'T OF TRANSP., https://www.faa.gov/airports/planning_capacity/npias [https://perma.cc/2QT3-8JSS].

227. Jackson v. Metro. Edison Co., 419 U.S. 345, 351 (1974). ("the key inquiry . . . must be whether there is a sufficiently close nexus between the state and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the state itself").

228. *Id*. at 348.

229. *Id.* at 359.

230. *Id.* at 350.

the existence of a monopoly, or the performance of an essential service does not automatically transform private conduct into state action.[231] Instead, there must be a sufficiently close nexus or "joint participation" between the state and the private entity.[232] Here, the Court found that the regulation was largely procedural—filed in tariff documentation that had not been scrutinized or approved by the regulatory agency at the time of the termination—and that the utility based its decision on its own tariff provisions and private business judgment.[233] The Court deemed the regulatory oversight insufficient to make the utility's conduct attributable to the state, especially since the utility acted independently within the framework of its regulatory scheme.[234]

Consequently, the Court affirmed that the regulatory authority's mere approval or absence of objection to the utility's practices did not convert those practices into "state action."[235] Justice Rehnquist, writing for the majority, underscored that for conduct to be considered "state action," there must be a significant governmental role or involvement, which was lacking here.[236] The dissenting Justices argued that the extensive regulation, the utility's monopoly status, and the state's cooperation in approving the tariff supported a finding of state action, emphasizing that the private utility's conduct, especially in an essential service context, was intertwined with governmental authority.[237]

The Court's ruling underscored that private entities regulated by the state, but not acting as government actors, are generally outside the scope of constitutional restraints, and that extensive regulation alone does not make private conduct constitutionally attributable to the state.

In short, although air travel today is subject to government regulation, their conduct is not enough to make airlines state actors. Thus, the only avenue to protect people with disabilities during air travel would be to create a private right of action under the ACAA, as discussed in Part V. Otherwise, people with disabilities would be relegated to only using ground transportation. Such a relegation

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231. *Id.* at 351–52.
232. *Id.* at 357–58.
233. *Id.* at 354.
234. *Id.* at 357.
235. *Id.* at 358–59.
236. *Id.* at 351.
237. *See id*. at 359–64 (Douglas, J., dissenting); *id*. at 364–65 (Brennan, J., dissenting).

would constitute an injustice given the impact on jobs, healthcare, and relationships, as well as the relatively fast and safe nature of air travel.[238]

PART V. RECOMMENDATIONS

Given the stigma and bias towards people with disabilities, it is regrettable to have to contend for equal services and use an interest convergence[239] argument that aligns the needs of people with disabilities and business. Good business practices should already operate under the universal authoritative baseline for human dignity found in the Universal Declaration of Human Rights that guides responsible conduct acknowledging that "all human beings are born free and equal in dignity and rights"[240] and provide services accordingly to preserve such dignity. Yet, the market will not regulate itself. We need an ideological shift toward a social model of disability, paired with a private right of action under the ACAA, to start tackling this constructed exclusion.

A. Recommendation #1: Ideological Shift

Airlines' policies and procedures must follow the ACAA, which contains only very vague guidance on accommodation for air passengers with disabilities. Under the ACAA, passengers are generally not required to notify the airline of their disability in advance.[241] However, the airline may require forty-eight-hour notice

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238. Peter Dizikes, *Study: Flying Keeps Getting Safer*, MIT NEWS (Aug. 7, 2024), https://news.mit.edu/2024/study-flying-keeps-getting-safer-0807 [https://perma.cc/KK2A-S8EN] (explaining that the risk of dying during a flight was 1 in 13.7 million between 2018 and 2022).

239. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980) (describing interest convergence, which explains that progress in racial justice and civil rights for marginalized groups—particularly Black Americans—tends to occur only when such progress aligns with the interests of the dominant or majority groups). In other words, the advancement of racial equality "converges" with the interests of the powerful. Thus, reforms or civil rights gains are likely only when they serve or benefit the wider societal or economic interests of those in power.

240. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 1 sec.1 (Dec. 10, 1948).

241. 49 U.S.C. 41705, Section 382.33; *see also About the Air Carrier Access Act*, *supra* note 27.

for certain accommodations,[242] and the CDC recommends notice for accommodations requiring some preparation at the time of service.[243] This statutory structure, which establishes a general rule against notice with some exceptions, highlights a tension known as the "dilemma of difference," wherein the law struggles to balance looking past difference to prevent discrimination and acknowledging difference to facilitate better service.[244] But it is essential to recognize that, had airlines designed their aircrafts and consumer services with human variation in mind using a universal design standard, advanced notice would *never* be necessary, and the law would not have to struggle with the "dilemma."[245]

To fully integrate people with disabilities in air travel will require a shift in ideology from legislators and leaders in the airline industry, such that they recognize the fundamental nature of the constructed exclusion.[246] Relying solely on the ACAA and ADA has proven insufficient to address everyday exclusion; instead, we need proactive policy, design, and cultural changes that go beyond minimum legal compliance. This ideological shift will be spurred on

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242. *See* 49 U.S.C. 41705, Section 382.33 ("Air carriers may require up to 48 hours' advance notice for certain accommodations that require preparation time (e.g., respirator hook-up, transportation of an electric wheelchair on an aircraft with less than 60 seats).").

243. Jasmine Owens & Eric Cahill, *Traveler's with Disabilities*, *in* CDC YELLOW BOOK: HEALTH INFORMATION FOR INTERNATIONAL TRAVEL 157, 160–61 (Jeffrey B. Nemhauser ed., 2024) (discussing how airlines are not permitted to require travelers to provide advance notice of a disability, but stating that "[a]irlines might require up to 48 hours advance notice and 1-hour advance check-in, however, for certain accommodations that require preparation time for services").

244. The dilemma of difference are contradictory legal strategies related to race, sex, ability, religion, and ethnicity. Correcting inequalities requires that laws and policies recognize, and at times ignore, differences, resulting in the legal construction and reconstruction of stigma. MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW 22–23 (2016).

245. *See Ronald L. Mace Papers*, supra note 108 (describing how Mace contracted polio as a child and quickly realized the challenges people with disabilities face, leading him to pioneer the concept of universal design and creating aesthetically pleasing buildings with an inclusive design that most people could use regardless of ability); *see also* SELWYN GOLDSMITH, DESIGNING FOR THE DISABLED: THE NEW PARADIGM 121 (1997) (explaining universal design principles and their application to buildings, infrastructure, and consumer products).

246. LOUIS ALTHUSSER, ON IDEOLOGY 19 (2020) (describing that physical exclusion and ideology work together to generate repression, suggesting that to end repression, society must achieve both inclusion and ideological shift).

by advocacy not only for anti-discriminatory laws and policies for air travel, but also inclusively-designed training and aircraft infrastructure.

Specifically, society must shift toward viewing people with disabilities under the most empowering disability model, the social model of disability,[247] rather than the medical model.[248] The use of disability models significantly shapes the systemic framework and experiences in which people with disabilities are treated.[249] The medical model, the most harmful model, determines disability eligibility based on impairments assessed by medical professionals.[250] This model has permeated societal perceptions, reinforcing the idea that individuals with disabilities are inherently impaired.[251] Currently, people with disabilities cannot escape the stigma imposed on them by those deemed as "normal," who fear being contaminated and view people with disabilities as morally culpable for their disabilities.[252]

By characterizing impairment as a purely medical issue, the medical model ignores that "disability" is a combination of medical, administrative, and legal factors.[253] The framework fosters the notion that disabilities are personal tragedies, positioning the "problem" within the individual and absolving society of accountability. Such

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247. MICHAEL OLIVER, THE POLITICS OF DISABLEMENT: A SOCIOLOGICAL APPROACH 4–6 (1990) (introducing and defending the social-model approach to disability and arguing that social barriers—rather than individual impairment—produce disablement).

248. *See* DEBORAH STONE, THE DISABLED STATE 107–08 (1984) (describing that the medical model focuses on the disparity between the physical functioning of an individual and "normal" or "standard" functioning).

249. *See* OLIVER, *supra* note 247.

250. Angélica Guevara, *The Need to Reimagine Disability Rights Law Because the Medical Model of Disability Fails Us All*, 2021 WIS. L. REV. 269, 276–78 (2021) (noting that "the medical model is cemented in the medical field, as doctors determine whether an individual has an impairment or loss of function to qualify for disability benefits," and critiquing this model as "othering" and harmful).

251. *Id.* at 116–17.

252. Lisa Iezzoni, *Stigma and Persons with Disabilities*, *in* STIGMA AND PREJUDICE: TOUCHSTONES IN UNDERSTANDING DIVERSITY IN HEALTHCARE, 6–8 (R. Parekh & W. Childs eds., 2016) (discussing how stigma toward persons with disabilities shapes healthcare interactions, access, and outcomes).

253. SIMI LINTON, CLAIMING DISABILITY: KNOWLEDGE AND IDENTITY 11–12 (1998) (describing the difference between definitions of "disability": its medical definition, which has a negative connotation, and its definition as a social/political category, which relates to the identity of "a group bound by common social and political experience").

framing supports harmful stereotypes that view individuals with disabilities as defective or incomplete, neglecting their inherent value.

Society's reliance on the medical model makes it harder for advocates to challenge notions of normalcy by highlighting multi-dimensional identities, preventing activism from effecting change.[254] When leaders or gatekeepers arbitrarily decide which disabilities warrant accommodations, they shape public perceptions of what constitutes a credible disability, perpetuating stigma rather than alleviating it.[255]

By contrast, the social model of disability posits that societal structures, rather than individual impairments, create disabilities.[256] Developed by Michael Oliver in "The Politics of Disablement," this model emphasizes that disability arises from social factors that exclude individuals from mainstream activities.[257] By applying the social model, society can recognize its role in disabling people and should aim to maximize individual potential by challenging existing biases.[258] For instance, instead of simply providing ramps to navigate stairs, buildings should be designed without stairs altogether, making them accessible for all.

Policies and procedures that embrace the social model of disability, premised on an appreciation and accommodation of as many human variations as possible, consider all individuals as a collective whole.[259] Framing disability through an empowering model, like the social model of disability,[260] erodes the harmful ability-disability binary.[261]

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254. *See* Guevara, *supra* note 250, at 270 (arguing that the medical model "essentializes disability," reinforces norms and categorical thinking, and thus undermines the capacity of activism to effect systemic change).

255. *See* Angélica Guevara, *Ableness as Property*, 97 DENV. L. REV. F. 1, 2 (2020) (describing that gatekeepers effectively manufacture disability by deciding which disabilities are acceptable to accommodate).

256. OLIVER, *supra* note 247, at 4–6.

257. *Id.*

258. *Id.* at 11.

259. *Id.*

260. *Id.* at 10–11.

261. Angélica Guevara, *Not Able Enough, Not Disabled Enough*, 29 TEX. J. C.L. & C.R. 147, 150 (2024) (critically examining the disability binary, which is the tendency within legal and policy frameworks to categorize individuals as either "able-bodied" or "disabled.").

This perspective aligns with universal design and its commitment to inclusivity in design. For example, Ronald Mace and Selwyn Goldsmith focused on creating products and structures that benefit everyone, such as dropped curbs for varying users.[262] Universal design fosters broader social participation and benefits all individuals, demonstrating that limitations arise more from societal attitudes and environmental barriers than from inherent deficiencies in individuals with disabilities.

In addition, unlike those with apparent disabilities, those with non-apparent disabilities face unique circumstances, and training should consider such factors. People with non-apparent disabilities may pass as non-disabled and avoid some of the discrimination that those with apparent disabilities experience. Assumptions, however, are always harmful. For instance, misunderstandings can result if airline personnel assume that someone is not disabled simply because they do not appear to be. Behaviors are misunderstood when non-disabled individuals are used as the standard for comparison. Doing so perpetuates the idea that there is a "right way of being." Consider Drew Dakessian's perspective:

> As someone who lives with ADHD, I have found that because my symptoms have no perceptible external source, people interpret them as character flaws. They assume my clinical lack of motivation is laziness and my difficulty absorbing complex information is plain old stupidity.[263]

When someone feels disbelieved, frustration and anger may arise because, in essence, the individual is being dismissed due to this failure of being truly seen or heard. This feeling is compounded when a person with a non-apparent disability has experienced dismissiveness throughout their life in various social settings.

Non-apparent disabilities can vary; thus, training staff to be patient and understanding will help regardless of the type of

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262. *See Ronald L. Mace Papers*, *supra* note 108 (describing how Mace contracted polio as a child and quickly realized the challenges people with disabilities face, leading him to pioneer the concept of universal design and creating aesthetically pleasing buildings with an inclusive design that most people could use regardless of ability); GOLDSMITH, *supra* note 245, at 177–90 (reimagining public restrooms with a more universal design).

263. Drew Dakessian, *Non-Apparent Disabilities: When Your Disability is not Visible,* WORLD INST. ON DISABILITY, https://wid.org/non-apparent-disabilities-when-your-disability-is-not-visible/ [https://perma.cc/8GY6-9JVU].

passenger traveling. Imagine how frustrating these fluctuations are for people with disabilities. What works one day may not work the next; thus, being flexible and being able to adjust accordingly makes a difference in improving their travel experience. A staff member should always encourage independence by allowing individuals to express their preferences and decide how they want to be assisted. Finally, staff should be trained to develop techniques to stay positive throughout any situation that arises. A positive attitude is a must to continue fostering trust so that passengers feel comfortable and supported, whether they have a disability or belong to a marginalized group or not.

Legislators and airline leaders should actively advocate for inclusive practices that will enable everyone to interact with people with disabilities without stigma. However, this begins with having people with disabilities at the table. The slogan "nothing about us without us" that is often chanted by people with disabilities summarizes this principle well.[264]

This is important because, as Drew Dakessian acknowledges, while people may be ignorant rather than intentionally malicious, it can be just as damaging to the person with a disability if they are excluded and meant to feel invisible.[265] Thus, when designing training for staff, it is important to use the social model of disability because it is the most empowering and inclusive.[266] This is the first step in embracing human variation and acknowledging that it is social structures and settings that disable.

In the context of a universal design approach to aircraft, airlines must ask for aircraft that are created and designed with as many people in mind as possible. With the DOT's new rule, newer planes with 125 or more seats require at least one lavatory that is

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264. *See* JAMES I. CHARLTON, NOTHING ABOUT US WITHOUT US: DISABILITY OPPRESSION AND EMPOWERMENT 3–4 (1998) (describing the history of the phrase "nothing about us without us").

265. *Id.*

266. Although this book primarily embraces the social model of disability because it is the one most directly addressing the systemic barriers often created by systems and physical structures addressed by laws, it is also important to note its main shortcomings not readily addressed by laws. The model primarily locates disability in social, environmental, and attitudinal barriers which downplays embodiment and impairment, resulting in oversimplification of complex interactions. This underestimates the lived, physical, and sensory realties of impairment (e.g., pain, fatigue, functional limitations). *See generally* ROSEMARIE GARLAND THOMSON, EXTRAORDINARY BODIES: FIGURING PHYSICAL DISABILITIES IN AMERICAN CULTURE 7–8 (20th ed. 2017).

"large enough to permit a passenger with a disability and attendant, both equivalent in size to a 95th percentile male, to approach, enter, and maneuver."[267] The C-17 Globemaster III aircraft, for example, is large enough to house a lavatory that anyone can access regardless of disability.[268]

Best practices that incorporate the social model of disability and universal design can help create better aircraft and assist with staff training. Specifically, airlines should have a lead attendant on every aircraft who is purposely trained in disability particulars. This point person would reassure and validate passengers' experiences, showing immediate responsiveness through attentive and active listening to encourage open communication. They would have extensive knowledge of all the available resources to provide an enjoyable travel experience and would approach any individual with or without a disability with understanding and empathy.

Additionally, the lead attendant should be a senior staff member who knows the ins and outs of the company policies and the accessibility features of the aircraft. This is the individual to whom other staff members defer to should an issue regarding adjustments or accommodations arise. This lead attendant should ensure all other staff follow the policies and procedures. They can guide and ensure that all staff members respect an individual's privacy by not needing the passenger to disclose their disability to offer good service.[269]

The lead attendant should be separate from the Complaint Resolution Official (CRO), which every airline already employs and who handles all general airline complaints.[270] The difference is that the designated lead attendant would not be dealing with complaints but offering suitable accommodation services, thereby increasing the confidence a person with a disability has when they request services.

In general, airlines and businesses should keep in mind that changes benefiting people with disabilities often benefit those without

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267. *U.S. Department of Transportation Requires Airline Lavatories*, *supra* note 66.

268. *C-17 Globemaster*, BOEING, https://www.boeing.com/defense/tankers-and-transports/c-17-globemaster [https://perma.cc/STL4-K42P].

269. *Wheelchair and Guided Assistance*, *supra* note 119 (describing how in situations where there is uncertainty about the access needs of a passenger, a carrier may ask the passenger for credible verbal assurance that the passenger needs the service and how the service assists with the passenger's disability)

270. *Air Travel Complaints: Disability Related Air Travel Issues*, U.S. DEP'T OF TRANSP., https://www.transportation.gov/airconsumer/complaint-process [https://perma.cc/699P-9J98].

because what is most inclusive of human variation tends to have third-party benefits.[271] Movement by legislators and airlines in the ideological direction that is most inclusive is a necessary step to eradicate the constructed exclusion of people with disabilities.

Recently, American Airlines made a hefty investment of $1.1 billion in employee training and development.[272] This represents a major initiative that has the potential for long-term advantages.[273] The hope is that it will reduce turnover rates and increase productivity. This commitment, which amounts to approximately $8,000 for each employee, may enhance operational efficiency, customer service, and employee retention.[274] The variety of programs offered, ranging from new hire orientation to specialized leadership training, reflects a thorough strategy toward skill enhancement. With a total of 9.9 million training hours—averaging 70 hours per employee—this effort could foster a more skilled and versatile workforce.[275]

It is evident that airlines have the money and resources to implement inclusive training. Specifically, airlines should provide training and resources that teach staff how to help passengers with disabilities manage their disability more effectively during air travel. By failing to do so, airlines externalize the labor onto passengers with disabilities, who may then find themselves having to learn how to manage their disability during air travel and teach staff what they need. This barrier further disincentivizes them from traveling.

B. Recommendation #2: Private Right of Action

Against the backdrop of this ideological shift, airlines need to be held accountable when they do not protect the rights of individuals

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271. *See* DOLMAGE, *supra* note 108, at 86 (explaining how the curb cuts to accommodate wheelchair users benefit others).

272. AMERICAN AIRLINES, SUSTAINABILITY REPORT 2023 43 (2023), https://news.aa.com/news/news-details/2024/American-Airlines-releases-2023-Sustainability-Report-GEN-OTH-07/ [https://perma.cc/Y2CN-NDH2] (showing how "American spent $1.1 billion on functional and professional development training in 2023, almost $8,000 per person"); *see also* STOCK TITAN, *American Airlines Invests 1.1 Billion in Team Member Training and Development, Empowering Employees With New Skills and Career Growth Opportunities*, https://www.stocktitan.net/news/AAL/american-airlines-invests-1-1-billion-in-team-member-training-and-xt5o1csmq6gf.html [https://perma.cc/FA5S-SJ38].

273. AMERICAN AIRLINES, *supra* note 268 and accompanying text.

274. *Id.* at 43.

275. *Id.*

with disabilities. Currently, a private right of action that protects people with disabilities from discrimination in air travel is a more feasible avenue to take because, unlike ground transportation, which has fragmented regulations across federal, state, and local authorities, air travel is far more centralized, technical, and uniform.[276]

Although some key airports receive federal funding, most major airlines in the United States do not receive federal funding unless there are special circumstances, as was the case with COVID-19.[277] In this case, people with disabilities could theoretically sue under Section 504 of the Rehabilitation Act for discrimination since this law protects them in federally funded programs or spaces.[278] As courts have failed to provide an implied private right of action under the ACAA, Congress should mandate an express private right of action thereunder.[279] Doing so would force airlines to comply with laws intended to protect people with disabilities from discrimination. The imposition of fines has not deterred airlines from disregarding the needs of people with disabilities in air travel,[280] and airlines instead attempt changes that treat people with disabilities as an afterthought. An express private right of action would be a useful legal mechanism that would force airlines to ensure people with

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276. *See* 49 U.S.C. § 106 (creating the Federal Aviation Act within the DOT to regulate and promote civil aviation); 49 U.S.C. § 41705 (prohibiting discrimination in U.S and foreign air carriers from discriminating on the basis of disability in air travel).

277. *Airline and National Security Relief Programs*, U.S. DEP'T OF TREASURY, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-industry/airline-and-national-security-relief-programs, [https://perma.cc/73TR-PWMJ].

278. 29 U.S.C. § 794.

279. *See* Lopez v. Jet Blue Airways, 662 F.3d 593, 598 (2d Cir. 2011) (holding that no implied private right of action exists for violations of the ACAA); *see also* Curtis D. Edmonds, *When Pigs Fly: Litigation Under the Air Carrier Access Act*, 78 N.D. L. REV. 687, 692–95 (2002) (discussing various courts' analyses finding no implied private cause of action under the ACAA); *Recent Disability News in the Aviation Space*, A.B.A (Dec. 19, 2024), https://www.americanbar.org/groups/diversity/disabilityrights/news/recent-disability-news-aviation-space/ [https://perma.cc/V4PY-7Z5H] (demonstrating the latest awareness of this issue by the legal community).

280. *United Airlines, Inc. Order 2016-1-2*, U.S. DEP'T OF TRANSP. OFF. OF THE SEC'Y (Jan. 7, 2016), https://www.transportation.gov/sites/dot.gov/files/docs/eo_2016-1-2.pdf [https://perma.cc/8XBR-EBCS] (fining United Airlines $750,000 in 2016 for discriminating against travelers with disabilities during the enplaning and deplaning process).

disabilities are not experiencing constructed exclusion in air travel and incentivize airlines to take action to prevent this exclusion.

This express private right of action has been effective in other instances, such as the technology industry, with regard to data privacy. For example, the California Consumer Privacy Act (CCPA) allows consumers to sue companies for data breaches that fail to protect personal information.[281] The Act aimed to increase company accountability and expand consumer awareness regarding companies' handling of personal data.[282] The law compelled companies to update their privacy policies and practices to comply with the law and to raise data management standards.[283] Similarly, the National Voter Registration Act has an expressed private right of action where an individual can file a federal lawsuit to address violations.[284]

As an express private right of action allows an aggrieved individual to pursue legal recourse on their own rather than waiting for a federal agency to enforce the law, an individual with a disability would not have to wait until enough people complain about their treatment to a federal agency to affect the way people with disabilities are treated. Currently, without this private right of action, people with disabilities are often deterred from filing complaints because of past negative experiences wherein their complaint was not addressed.[285] In addition, people with disabilities often experience advocacy fatigue from the extra physical and

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281. *California Consumer Privacy Act*, CAL. DEP'T OF JUST. OFF. OF THE ATT'Y GEN. (Mar. 13, 2024), https://oag.ca.gov/privacy/ccpa [https://perma.cc/G4RE-6M4T].

282. *See* Rebecca Harris, *Forging A Path Towards Meaningful Digital Privacy: Data Monetization and the CCPA*, 54 LOY. L.A. L. REV. 197, 233 (2020) ("By requiring that companies disclose how consumer data are used and with whom such data are shared, the CCPA helps to provide consumers with the information necessary to make informed choices and to hold companies accountable.").

283. John Frank Weaver, *Everything is Not* Terminator: *AI Issues Raised by the California Consumer Privacy Act*, 3 J. ROBOTICS, A.I. & L. 73, 73 (2020).

284. National Voter Registration Act § 11, 52 U.S.C. § 20510 (1993); *The National Voter Registration Act of 1993 (NVRA)*, U.S. DEP'T OF JUST.: C.R. DIV. (Nov. 1, 2024), https://www.justice.gov/crt/national-voter-registration-act-1993-nvra [https://perma.cc/JA3W-AJSR].

285. Bong Koo Lee, Sheela Agarwal & Hyun Ji Kim, *Influences of Travel Constraints on the People with Disabilities' Intention to Travel: An Application of Seligman's Helplessness Theory*, 33 TOURISM MGMT. 569, 572 (2012) (finding that travel constraints significantly reduce people with disabilities' intention to travel and discussing empirical results and Seligman's helplessness theory).

emotional labor exerted when fighting for their rights.[286] An express private right of action would remove at least part of this burden.

Having a private right of action under the ACAA is appropriate because it allows individuals, particularly those with disabilities, to directly seek legal remedies when airlines fail to comply with accessibility and non-discrimination requirements. This enforcement mechanism ensures accountability and provides a practical means for affected individuals to address violations promptly, promoting full and equal access to air travel. Additionally, safeguarding the right to travel in all instances helps maintain a society where personal mobility is respected as a core aspect of freedom and liberty, providing access to specialized healthcare, supporting economic opportunities, and social participation for all individuals, regardless of their abilities or backgrounds.

CONCLUSION

The constructed exclusion of people with disabilities in air travel is both a social injustice and an inimical business practice—but where private incentives have failed, the law must step in. Given the rising number of travelers with disabilities,[287] providing equitable access is urgent. Doing so will enable individuals with disabilities to participate fully in social, economic, and civic life. Ultimately, prioritizing inclusivity fosters a culture of respect and dignity for all travelers.

We need stronger legal and financial incentives compelling airlines to change their current practices. An express private right of action under the ACAA is necessary to hold airlines legally accountable for discrimination and prevent the constructed exclusion of people with disabilities from air travel. This essential legal right must be accompanied by a fundamental ideological shift toward understanding disability as *constructed* by exclusionary business practices that impair access to fundamental rights, like travel. These legal and ideological shifts are necessary to actualize our society's moral responsibility to ensure equal treatment for all travelers.

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286. *See* Robert L. Ballard, Sarah J. Ballard & Lauren E. Chu, *"Oh, We Are Going to Have a Problem!": Service Dog Access Microaggressions, Hyper-Invisibility, and Advocacy Fatigue*, *in* THE PALGRAVE HANDBOOK OF DISABILITY AND COMMUNICATION 331–47 (Michael S. Jeffress et al. eds., 2023) (analyzing service-dog access microaggressions, hyper-invisibility, and advocacy fatigue in disability communication contexts).

287. *See* Jainchill et al., *supra* note 50.