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A Right to Fly: Navigating the Air Carrier Access Act and the Americans with Disabilities Act Following *Alexander v. Sandoval*

**William Belles**

There are approximately 54 million disabled individuals in the United States.¹ Those 54 million American citizens live their day to day lives differently than the average person, facing difficulties most others cannot comprehend. While legislation has come a long way in recent decades, one area that has remained stagnant is how we treat disabilities on airplanes. Despite legislation remaining relatively stagnant, judicial opinions have not. In fact, many United States Circuit Courts have determined that the Air Carrier Access Act, which provides limited protections on airplanes, does not confer a private cause of action for violations. As a result, the only remedy allowed for aggrieved airline passengers is through a complaint system set up by the Department of Transportation. No private remedy. No compensation. Only administrative inaction. This has proven to be a woefully insufficient remedy for direct harms to disabled individuals, creating a dire situation where the livelihoods of millions of Americans remain in jeopardy.

INTRODUCTION

The United States has a longstanding problem with the way it treats disabled individuals. In response to this problem, Congress enacted the Americans with Disabilities Act (“ADA”) in 1990. While the ADA has been helpful in securing rights and remedies for disabled individuals, several sections specifically exclude aircraft from their guidelines. Treatment of disabled passengers on aircraft is handled under a different statute, the Air Carrier Access Act (“ACAA”), which encompasses the rights of disabled airline passengers. While the ACAA briefly addresses disabilities on aircraft, it does not provide for a private right of action for passengers who have been discriminated against. The United States Supreme Court later determined that congressional intent is required before any statute may confer a private right of action. The Court’s decision had negative ramifications on how it is being applied to the interpretation of the ACAA. There was once an understanding that the ACAA implied a right of action; however, the Supreme Court’s decision in Alexander v. Sandoval proved to be an end to that understanding. Additionally, there are several key differences between the ADA and ACAA, both in how they are worded and how they are being enforced. There is some hope on the horizon, however, as legislation has been proposed in both the House and Senate that would incorporate language of the ADA into the ACAA and provide specific sections allowing for a private right of action for violations.

3. See id.
5. See id.
7. Id.
Despite the intentional exclusion of aircraft from the provisions included under the ADA, United States courts were willing to imply a private right of action under the ACAA. This interpretation of the ACAA allowed aggrieved passengers a non-administrative remedy to their discrimination claims. The two cases that bear the most importance in this time are Tallarico v. Trans World Airlines, Inc.,8 which was decided before the enactment of the ADA, and Shinault v. American Airlines, Inc.9 The section that follows will discuss how the Court viewed congressional intent under the ACAA prior to 2001, when the Court decided Sandoval. These cases present a model for how disability cases should be decided when determined under the framework of the ACAA.

To understand the importance of Tallarico, Shinault, and other cases regarding the ACAA and ADA, it is important to understand the underlying statutes. The ADA was enacted in 1990 to “establish a clear and comprehensive prohibition of discrimination on the basis of disability.”10 Congress found that people with disabilities have historically been segregated and isolated, a practice that, at the time of enacting the ADA, was still prominent in areas such as employment, housing, and education, among other crucial aspects of our society.11 Under the ADA, it is a violation to discriminate against any individual on the basis of their disability.12 Prior to 1990, Congress had yet to enact a statute providing protections and remedies for people with disabilities; there was no way for aggrieved individuals to receive redress.13

The ACAA was originally enacted in 1986, four years prior to the ADA, as an amendment to the Federal Aviation Act (“FAA”).14 Originally, the FAA did not provide any enforcement mechanism for airline passengers with disabilities.15 In fact, the FAA made no mention of people with disabilities.16 The ACAA amended the FAA, providing that “no air carrier may discriminate against any otherwise qualified handicapped individual, by reason of

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11. Id.
16. Id.
such handicap, in the provision of air transportation.”\textsuperscript{17} Something important to note is that while the initial version of the ACAA further provided a definition for “handicapped individual,” it did not provide for enforcement or remedy for violations of this provision. The ACAA was later amended to provide an administrative enforcement mechanism.\textsuperscript{18} Specifically, the ACAA leaves enforcement up to the Department of Transportation (“DOT”).\textsuperscript{19} No private remedy has been written into the statute, and all grievances are to be filed with the DOT.\textsuperscript{20}

Statutes are always subject to interpretation by the courts. As originally enacted, the ACAA was interpreted to allow a private right of action for aggrieved airline passengers.\textsuperscript{21} The Tallarico and Shinault cases provide an example of the sort of analysis courts would apply in determining congressional intent in the context of the ACAA. In both cases, the respective circuits found an implied congressional intent to provide passengers with a private right of action for alleged discrimination under the ACAA.

In Tallarico, Polly Tallarico was fourteen years old and suffered from cerebral palsy.\textsuperscript{22} While Ms. Tallarico was able to move around by crawling, she primarily used a wheelchair for mobility.\textsuperscript{23} On November 25, 1986, Ms. Tallarico intended to fly unattended to St. Louis, Missouri.\textsuperscript{24} Upon her arrival, ticket agent Richard Wattleton contacted the Trans World Airlines (“TWA”) station manager, Lynn Prothero, and asked for direction for how to handle the situation.\textsuperscript{25} Wattleton informed Prothero that Ms. Tallarico could not speak or walk, but could still communicate using a communication board.\textsuperscript{26} Upon hearing this information, Prothero informed Wattleton that Ms. Tallarico would not be allowed to fly alone, believing her unable to assist herself in an emergency, and would be unable to quickly evacuate if needed.\textsuperscript{27} As a result, Mr. Tallarico, Polly’s father, needed to fly to Houston in order to accompany his daughter on the flight.\textsuperscript{28} Mr. Tallarico subsequently filed a


\textsuperscript{18.} Air Carrier Access Act, 49 U.S.C.S § 41705(c) (LEXIS through Pub. L. 118-19).

\textsuperscript{19.} Id.

\textsuperscript{20.} See id.


\textsuperscript{22.} Tallarico, 881 F.2d at 568.

\textsuperscript{23.} Id.

\textsuperscript{24.} Id.

\textsuperscript{25.} Id.

\textsuperscript{26.} Id.

\textsuperscript{27.} Tallarico, 881 F.2d at 568.

\textsuperscript{28.} Id.
lawsuit, on Polly’s behalf, alleging that TWA violated the ACAA by denying Ms. Tallarico the right to board the aircraft on the basis of her disability.29

Upon its review of the case, the Eighth Circuit Court of Appeals very early on acknowledged the fact that the ACAA does not provide a private cause of action.30 The court did, however, determine that the ACAA could imply a private cause of action, so long as four factors are met.31 Relying on the United States Supreme Court’s decision in Cort v. Ash,32 the four factors that must be met were:

First, is the plaintiff ‘one of the class for whose especial benefit the statute was enacted,’ that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?33

Using this framework, the Eighth Circuit held that Ms. Tallarico was of the class for whose benefit the statute was enacted.34 First, as a person with disabilities, Ms. Tallarico was a part of the class meant to benefit from the statute, since the ACAA was enacted to provide protections for disabled airline passengers.35 Second, the court found that the ACAA was designed to create such a remedy.36 The court agreed with the district court determination that the ACAA was enacted in response to the United States Supreme Court’s decision in United States Department of Transportation v. Paralyzed Veterans of America (“Paralyzed Veterans”).37 In Paralyzed Veterans, the United States Supreme Court determined that Section 504 of the Rehabilitation Act of 1973 only applied to airlines receiving federal subsidies.38 The

29. Id.
30. Id.
31. Id.
34. Tallarico, 881 F.2d at 569.
35. Id. at 568.
36. Id. at 570.
38. Tallarico, 881 F.2d at 570.
determination in *Paralyzed Veterans* essentially allowed airlines to discriminate against passengers, so long as they were not receiving federal subsidies. Congress subsequently amended the Federal Aviation Act of 1958 to include a prohibition on discriminating against qualified disabled individuals.\(^{39}\)

The Eighth Circuit further agreed with the district court regarding the third and fourth factors.\(^{40}\) Regarding the third element, the court held that “to allow a private cause of action is consistent with the underlying purposes of the ACAA,”\(^{41}\) meaning that the underlying purpose of the ACAA, namely to prevent discrimination, is furthered by allowing aggrieved passengers to file their own complaints.\(^{42}\) Additionally, regarding the fourth element, the court held that the regulation was not one generally delegated to the states, where it would be inappropriate to infer a cause of action, stating “we conclude that the area of discrimination against handicapped persons by air carriers is not an area which is basically the concern of the states.”\(^{43}\) For these reasons, the court affirmed the district court decision and held that the ACAA created an implied right of action.\(^{44}\)

A few years after the *Tallarico* decision, and following Congress passing the ADA, the Fifth Circuit Court of Appeals decided *Shinault v. American Airlines*.\(^{45}\) Another ACAA interpretation case, *Shinault* further defined what is, arguably, the proper way to interpret the provisions within the ACAA. In *Shinault*, Walt Shinault, a quadriplegic, was set to travel to Washington D.C., accompanied by Jeff Covington, on February 15, 1989.\(^{46}\) Due to mechanical problems and bad weather, the plane arrived in Nashville, Tennessee, forty-five minutes behind schedule, and three minutes after his connecting flight was to depart.\(^{47}\) Due to the bad weather, however, the connecting flight to Washington, D.C. was also delayed.\(^{48}\) Mr. Shinault was assured by flight attendants that he need not worry and that he would make his flight.\(^{49}\) When the plane arrived in Nashville, the other passengers who needed to make the connecting flight were allowed off the plane, followed by all other passengers on the flight, except for Mr. Shinault.\(^{50}\)

Once all other passengers had left the plane, an American Airlines (“American”) special services agent brought a gurney, transferred Mr.

\(^{39}\) *Id.*

\(^{40}\) *Id.*

\(^{41}\) *Id.*

\(^{42}\) *Id.*

\(^{43}\) *Id.*

\(^{44}\) *Id.*


\(^{46}\) *Shinault*, 936 F.2d at 796.

\(^{47}\) *Id.*

\(^{48}\) *Id.*

\(^{49}\) *Id.*

\(^{50}\) *Shinault*, 936 F.2d at 798.
Shinault from his seat to the gurney, then wheeled him to a manual wheelchair.\textsuperscript{51} Anita Appleton, an American gate agent who was working the jet bridge for the connecting flight, boarded some of the late passengers before closing the doors for the first time.\textsuperscript{52} Ms. Appleton was then informed there were more passengers to board and requested permission to extend the jet bridge back to the aircraft and reopen the doors, which was granted.\textsuperscript{53} Mr. Shinault and Mr. Covington arrived at the gate at 2:50 p.m. and Mr. Covington asked if they could board the flight.\textsuperscript{54} American agent Ken Barry told the pair they were too late and had missed the flight.\textsuperscript{55} American records show that the plane did not pull away from the gate until 3:00 p.m., ten minutes after Mr. Shinault and Mr. Covington arrived.\textsuperscript{56}

Realizing that he would have to wait for the next flight, Mr. Shinault requested his wheelchair.\textsuperscript{57} He was told, however, that the wheelchair had been placed in the baggage compartment of the connecting flight he missed.\textsuperscript{58} He chose to not take the next available flight, which would have included a layover in Dallas, and instead opted for the next direct flight to Washington, D.C.\textsuperscript{59} Prior to filing the lawsuit, Mr. Shinault attempted to complain about the experience to the American executive offices, which yielded no results.\textsuperscript{60} Following American’s failure to adequately address his concerns, Mr. Shinault filed a lawsuit against American.\textsuperscript{61}

The district court granted American’s motion for summary judgment, based on three criteria. The reasons for granting the motion were:

(1) the ACAA does not allow for recovery of emotional distress damages; (2) the ACAA is a remedial statute and does not allow for recovery of punitive damages; and (3) the district court cannot issue injunctive relief because under the doctrine of primary jurisdiction, the Secretary of Transportation is charged with enforcing the ACAA.\textsuperscript{62}

\textsuperscript{51} Id.
\textsuperscript{52} Id.
\textsuperscript{53} Id. at 799.
\textsuperscript{54} Id.
\textsuperscript{55} Shinault, 936 F.2d at 799.
\textsuperscript{56} Id.
\textsuperscript{57} Id.
\textsuperscript{58} Id.
\textsuperscript{59} Id.
\textsuperscript{60} Shinault, 936 F.2d at 799.
\textsuperscript{61} Id.
\textsuperscript{62} Id. at 799 (quoting Shinault v. Am. Airlines, Inc., 738 F. Supp. 193 (S.D. Miss. 1990)).
On appeal, the Fifth Circuit Court of Appeals, applying the four-factor test laid out in *Cort v. Ash*, found that Shinault met the first element, because “[n]o one disputes that Shinault is an ‘otherwise qualified handicapped individual’ under the statute.” The second element was met as well, with the court finding that the legislative history of the ACAA intended to create a private cause of action. For the third element, the court found that, consistent with the holding in *Tallarico*, the “cause of action would be consistent with the statutory scheme.” Finally, relying on the fact that “[p]rivate remedies for discrimination by airlines have traditionally emanated from federal legislation,” the court found that the fourth element had been met and held that a private cause of action existed under the ACAA.

Both the *Tallarico* and *Shinault* cases demonstrate how courts once interpreted the ACAA to imply an intent to create a private right of action. This trend persisted for well over a decade following *Tallarico*, as shown through the later decision in *Shinault* and an implication of a private right. In the segments that follow, this Article will discuss the shift that occurred not long after the turn of the century. This shift has had dramatic consequences for disabled airline passengers across the country.

**ALEXANDER V. SANDOVAL: A SHIFT IN STATUTORY INTERPRETATION**

The stance on disability discrimination took a sharp turn in 2001, when the United States Supreme Court decided *Alexander v. Sandoval*. In *Sandoval*, the Supreme Court held that, absent congressional intent to create a private right, a private cause of action under any statute does not exist. The Court was presented with the question of whether an individual could enforce disparate impact regulations under Title VI of the Civil Rights Act of 1964. In 1990, the State of Alabama amended its constitution to make English the state's official language. Pursuant to this amendment, the Alabama Department of Public Safety (“Department”) made driver’s license examinations only available in English. The petitioner (“Alexander”) cited the

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64. *Shinault*, 936 F.2d at 803-04.
65. *Shinault*, 936 F.2d at 800 (citing *Tallarico v. Trans World Airlines, Inc.*, 881 F.2d 566 (8th Cir. 1989)).
66. *Shinault*, 936 F.2d at 800.
67. *Id.*
70. *Id.* at 286.
71. *Id.* at 278.
72. *Id.*
73. *Id.* at 279.
“advance[ment] [of] public safety” as the purpose behind this change. Respondent (“Sandoval”), as a representative of the class, challenged the new English only rule as a violation of Title VI of the Civil Rights Act of 1964. The United States District Court for the Middle District of Alabama agreed with Sandoval and enjoined the policy, ordering the Department to accommodate non-English speakers. Alexander appealed to the Court of Appeals for the Eleventh Circuit, arguing that Title VI did not create a cause of action to enforce the regulation. Both the district court and circuit court disagreed with this argument, and the circuit court affirmed the decision.

The Supreme Court limited its review to one question: is there “a private cause of action to enforce the regulation.” Recognizing that Title VI has come to the Court’s attention several times, Justice Scalia noted three aspects of Title VI that “must be taken as given.” First, Justice Scalia recognized a private right to sue under § 601 of Title VI. Second, it was undisputed that § 601 only prohibits intentional discrimination. Third, Justice Scalia stated, “we must assume for purposes of deciding this case that regulations promulgated under § 602 of Title VI may validly proscribe activities that have a disparate impact on racial groups, even though such activities are permissible under § 601.” After addressing these aspects, the majority came to the conclusion that a private right of action to enforce the law comes from congressional intent. When reading the statute, Scalia and the majority found that there was no clear rights giving language within the text of § 602. In fact, § 602 was found to be “phrased as a directive to federal agencies engaged in the distribution of public funds.” Absent any clear congressional intent to create a private cause of action, the Supreme Court determined that no such cause of action may exist, and the Court may not create one.

The Court in Sandoval established a three-step approach for determining congressional intent. First, a court should look for certain rights creating language. Second, a court can look to the structure of the statute for any

74. Sandoval, 532 U.S. at 279.
75. Id.
76. Id.
77. Sandoval, 532 U.S. at 279.
78. Id.
79. Id.
80. Id.
81. Id.
82. Sandoval, 532 U.S. at 280.
83. Id. at 281.
84. Id. at 286.
85. Id. at 289 (quoting Universities Rsch. Ass’n, Inc. v. Coutu, 450 U.S. 754, 772 (1981)).
86. Id. at 287-88, 293.
87. Sandoval, 532 U.S. at 288.
enforcement measures in the absence of rights-creating language.\footnote{88} Justice Scalia wrote that “[t]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.”\footnote{89} Third, if the text and structure of the statute have not conclusively resolved whether there is an implied right of action, a court may look to the legislative history and context of the statute.\footnote{90} Absent these three factors, it is assumed Congress did not intend to create a private right of action.\footnote{91}

As a result of the Supreme Court’s hard stance on statutory interpretation in the \textit{Sandoval} decision, the courts took several steps backwards in furthering the rights of people with disabilities. As the Court explained, absent any form of congressional intent, a statute may not be interpreted to contain an implied private right of action. The decision to require congressional intent effectively overruled \textit{Shinault}, \textit{Tallarico}, and \textit{Cort}, and, while \textit{Sandoval} did not specifically address disability related issues, the holding would soon be used to undermine the rights of people with disabilities. As the following section will demonstrate, courts have used the holding in \textit{Sandoval} to limit the remedies for disabled airline passengers under the ACAA.\footnote{92} Given the absence of a remedy for airline passengers under the ADA, the judicial interpretation that the ACAA lacks congressional intent for a private cause of action continues to deal a crushing blow to the rights of disabled airline passengers.

\textbf{LIVING IN A POST-\textit{SANDOVAL} WORLD}

It did not take long for courts to start applying the holding in \textit{Sandoval} to cases involving the ACAA. In 2002, the year after \textit{Sandoval}, the Eleventh Circuit became the first to decide the issue in \textit{Love v. Delta Airlines}.\footnote{93} In \textit{Love}, plaintiff Cynthia Love, who was paralyzed due to polio, notified Delta Airlines of her disability so they could make proper accommodations.\footnote{94} While on the flight, she became ill and needed to be carried to the restroom by her son.\footnote{95} According to Love, Delta failed to provide a working call button to notify flight attendants, failed to provide an aisle chair to assist her in accessing the restroom, and failed to provide a restroom large enough to accommodate her needs, among other accessibility related complaints.\footnote{96} Love

\begin{thebibliography}{99}
\footnotetext[88]{Id. at 290.}
\footnotetext[89]{Id.}
\footnotetext[90]{Id. at 288.}
\footnotetext[91]{Id. at 293.}
\footnotetext[93]{Love v. Delta Air Lines, 310 F.3d 1347 (11th Cir. 2002).}
\footnotetext[94]{Id. at 1350.}
\footnotetext[95]{Id.}
\footnotetext[96]{Id.}
\end{thebibliography}
filed a complaint in the United States District Court for the Middle District of Alabama, the same district that handled Sandoval. In her complaint, Love asserted claims against Delta arising from the ADA and ACAA. The district court dismissed her ADA claim, finding that the relevant portion of the statute expressly excluded aircraft. As for her claims under the ACAA, the district court found that the ACAA “implies a private right of action” but that such actions are limited to “only injunctive and declaratory relief.” As a result, only Love’s claims regarding the aisle chair and training of staff survived a motion for summary judgment.

The Eleventh Circuit Court of Appeals granted Love’s petition for interlocutory appeal to determine two issues: (1) does the ACAA provide a private cause of action; and, if it does, (2) what remedies are available to those litigants? The court acknowledged that “[t]he issue of whether a statute creates by implication a private right of action is a ‘question of statutory construction,’ . . .” Applying Sandoval, the court looked at whether the language of the ACAA created a private cause of action first by looking at whether the statute contained rights-creating language. The court found that it was “indisputable that the ACAA does not expressly provide a private entitlement to sue in district court.” Finding there to be no such language in the statute, the court next looked to the structure of the ACAA. If a statute has a discernable enforcement mechanism, “Sandoval teaches that we ought not imply a private right of action” since expressly providing one mechanism for enforcement implies the exclusion of others. The court found that the ACAA “create[s] an elaborate and comprehensive enforcement scheme” that demonstrates a lack of congressional intent to create a private right of action.

Citing the specifics of the statute itself, the court explained that the ACAA mandates that the DOT is responsible for investigating complaints arising from alleged ACAA violations. This provision, as explained by the

97. Id.
98. Love, 310 F.3d at 1350.
99. Id.
100. Id. at 1351.
101. Id.
102. Id.
103. Love, 310 F.3d at 1351.
104. Id. (quoting Cannon v. Univ. of Chi., 441 U.S. 677, 688 (1979)).
105. Id. at 1352.
106. Id. at 1354 (citing Tallarico v. Trans World Airlines, Inc., 881 F.2d 566, 568 (8th Cir. 1989)).
107. Id. at 1353.
108. Love, 310 F.3d at 1353 (citing Alexander v. Sandoval, 532 U.S. 275, 290 (2001)).
109. Id. at 1354.
110. Id. See Air Carrier Access Act, 49 U.S.C.S. § 41705(c) (LEXIS through Pub. L. 118-19).
court, demonstrates a clear indication that Congress did not intend to create a private cause of action under the ACAA.\textsuperscript{111} Given the mechanisms put in place by Congress, the court held that the ACAA did not confer a private right to action on citizens, instead requiring passengers to file a complaint with the DOT for any alleged violations.\textsuperscript{112} Having found that there was no congressional intent to create a private cause of action, the court did not reach the second issue of what remedies are available to private litigants.\textsuperscript{113} The court noted that Congress has the ability to enact statutes protecting disabled passengers, including by expressly creating a private right of action.\textsuperscript{114} Having determined that the ACAA does not include such language, the court reversed the trial court determination that the ACAA implies a right of action and remanded the case.\textsuperscript{115}

In applying Sandoval to the ACAA, the court in Love set a very dangerous precedent. While this case specifically applied to the Eleventh Circuit, sister circuits would begin to follow this precedent and apply it in their own ACAA related cases. In fact, since Sandoval, every jurisdiction to decide the issue has found that the ACAA does not create a private cause of action.\textsuperscript{116}

In 2008, the Eastern District of Michigan, Southern Division, decided a case that, while there was no subsequent appeal following the decision, continued to set the precedent regarding the ACAA. In Thomas v. Northwest Airlines Corp., the Eastern District of Michigan found that there was no congressional intent to provide a private cause of action in the ACAA.\textsuperscript{117} The plaintiffs (“Thomas”) are five disabled individuals who claim Northwest Airlines (“NWA”) discriminated against them because of their disabilities.\textsuperscript{118} Thomas alleged that NWA failed to provide “adequate access or assistance on the aircraft and throughout the terminal” and other accessible areas at the Detroit Metro Airport.\textsuperscript{119} Several issues arose from the alleged discrimination, including missed flights due to “lack of prompt or adequate assistance,” being dropped while being assisted onto the aircraft, and repeated damage to their wheelchairs from improper handling.\textsuperscript{120}

\textsuperscript{111}Love, 310 F.3d at 1354.
\textsuperscript{112}Id. at 1360.
\textsuperscript{113}Id. at 1351.
\textsuperscript{114}Id. at 1360.
\textsuperscript{115}Id.
\textsuperscript{118}Id. at *3.
\textsuperscript{119}Id.
\textsuperscript{120}Id.
Prior to filing the lawsuit, Thomas attempted to resolve the issues through conversations and meetings with NWA. 121 These conversations led to NWA, with the help of the Wayne County Airport Authority (“Airport Authority”), also a defendant in the lawsuit, to promise to work to improve access for disabled passengers and hold independent audits of the facilities and services at the Detroit Metro Airport. 122 However, it is unclear if any audit ever took place and, as the Thomas plaintiffs found, the treatment of disabled passengers did not improve, prompting Thomas to resort to legal action. 123

The court was asked to answer the question of whether the ACAA provides disabled passengers with a private right of action. 124 While the plaintiff’s argument ultimately failed, it is important to discuss. Thomas argued that there should be an implied right of action and looked to history to support this argument. 125 This argument based itself on the recognition that Sandoval is good law, but that Love was incorrect in determining there was no private right. 126 First, Thomas argued that a private right of action has historically been recognized by the courts, specifically referring to the Eighth Circuit’s decision in Tallarico v. Trans World Airlines, Inc. and the Fifth Circuit’s decision in Shinault v. American Airlines, Inc. 127 Both the Tallarico and Shinault courts used the four-factor test previously discussed. 128 To refresh, the four factors are: First, is the plaintiff a part of the class for whose benefit the statute was enacted; Second, is there any indication of legislative intent to create or deny a remedy; Third, is it consistent with the legislative purpose to imply a remedy; and fourth, is the area of law generally relegated to state law so that it would not be appropriate to apply a federal remedy. 129

Second, Thomas argued that Congress did not prohibit a private right when it amended the ACAA. 130 In this argument, the Thomas plaintiffs contended that both Tallarico and Shinault were correctly decided and should therefore be the appropriate standard for determining congressional intent.

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121. Id.
123. Id. at *4.
124. Id.
125. Id. at *8.
126. Id.
129. Id. (citing Cort v. Ash, 422 U.S. 66, 78 (1975)).
130. Id. at *8.
under the ACAA.\textsuperscript{131} The court reminded the plaintiffs that the four-factor test used in \textit{Tallarico} and \textit{Shinault} was overruled in \textit{Sandoval} and was no longer applicable in determining congressional intent, even as applied to the ACAA.\textsuperscript{132}

Applying the holding in \textit{Sandoval}, the court looked at whether Congress had any intent to create a private right of action when it enacted the ACAA.\textsuperscript{133} NWA and the Airport Authority relied on \textit{Love} and \textit{Boswell v. SkyWest Airlines, Inc.}, a 2004 case with an identical holding to \textit{Love}, to support their argument that Congress did not create a private right of action under the ACAA.\textsuperscript{134} Recognizing that the ACAA has a specified enforcement mechanism, the creation of a complaint process through the DOT, the court held that, under \textit{Sandoval}, there was no intent to create a private right of action.\textsuperscript{135}

The court found that the difference in outcomes between \textit{Shinault} and \textit{Tallarico} and \textit{Love} and \textit{Boswell} was because of a difference in the sources used to reach the decision.\textsuperscript{136} The court noted that both \textit{Shinault} and \textit{Tallarico} looked to the legislative history, whereas \textit{Love} and \textit{Boswell} looked to legislative intent.\textsuperscript{137} Directly attacking the legislative history argument, the court in \textit{Thomas} stated that this argument has been weakened by the holding in \textit{Sandoval}, which stated that “[i]n determining whether statutes create private rights of action, as in interpreting statutes generally, legal context matters only to the extent it clarifies text.”\textsuperscript{138} Having found that \textit{Sandoval} overruled the four-factor test and severely damaged the use of legislative history, the court found in favor of NWA and dismissed the ACAA claims.\textsuperscript{139}

The differences between \textit{Shinault} and \textit{Tallarico} and \textit{Love} and \textit{Thomas} demonstrate the drastic impact \textit{Sandoval} had on the way courts view the ACAA. What started as judicial recognition of an implied right of action, turned into a full bar on implying a right where Congress did not show a clear intent to create one. Following \textit{Thomas}, the next court to hear this issue was the Second Circuit Court in \textit{Lopez v. Jet Blue Airways}.\textsuperscript{140} In \textit{Lopez}, Mary Lopez, who required a wheelchair to help her get around, alleged that Jet

\begin{table}
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\textbf{132.} & Id. at *9 (citing Alexander v. Sandoval, 532 U.S. 275, 288 (2001)). \\
\textbf{133.} & Id. at *6 (citing Alexander v. Sandoval, 532 U.S. 275 (2001)). \\
\textbf{136.} & Id. at *10. \\
\textbf{138.} & Id. at *12 (quoting Alexander v. Sandoval, 532 U.S. 275, 288 (2001)). \\
\textbf{139.} & Id. at *12. \\
\textbf{140.} & Lopez v. Jet Blue Airways, 662 F.3d 593 (2d Cir. 2011). \\
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Blue failed to provide her with wheelchair assistance during two July 2009 flights. According to Ms. Lopez, Jet Blue failed to provide a wheelchair for her to board the plane until just before the aircraft door closed, the delay causing her pain, discomfort, anguish, and anxiety. On her return trip, she alleged she was taken from the aircraft to the baggage claim, but was not given assistance in getting to her car. Ms. Lopez filed a complaint with the DOT on July 16, 2009, to express her concerns regarding her treatment. The DOT found that the airline had violated a statute requiring airlines to provide prompt assistance for passengers with disabilities when such assistance is requested. However, as for her return trip, where she was left without assistance to her car, the DOT was not able to determine whether any regulations were violated.

Ms. Lopez filed a complaint against Jet Blue Airways ("Jet Blue") alleging Jet Blue violated both the ADA and ACAA. The district court held that she was not entitled to bring an action against Jet Blue under either statute and granted Jet Blue’s motion to dismiss. The Second Circuit Court of Appeals accepted the appeal and reviewed the case to determine whether Ms. Lopez had a right to sue under either statute. The court found that Jet Blue’s conduct "arguably violat[ed] the ACAA and its implementing regulations," especially since the DOT found that Jet Blue was in violation of a different regulation for failure to provide prompt assistance. However, the court also found that, despite the DOT’s findings, "the ACAA does not expressly provide a private cause of action against an air carrier for violation of its terms," and determined that the proper question to ask is whether such a right should be implied.

To determine whether a private right of action should be implied, the court looked to Sandoval. As a result of its reliance on Boswell, Thomas, and Love, the Lopez court came to the same conclusion as its sister circuits: absent any clear rights creating language, a private right of action does not exist. As has been the trend throughout this Article, the court found that evidence of a lack of congressional intent stems from the express provision of an administrative enforcement mechanism. The court further pointed to the fact that the ACAA also allows those who have filed a complaint or

141. Id. at 595.
142. Id.
143. Id.
144. Lopez, 662 F.3d at 595.
145. Id.; see 14 C.F.R. § 382.95(a).
146. Lopez, 662 F.3d at 595.
147. Id.
148. Lopez, 662 F.3d at 596.
149. Id.
150. Id.
151. Id. at 597.
152. Id.
another person with “substantial interest” to file a petition for review in a circuit court, further demonstrating Congress’ intent to create an administrative enforcement mechanism as opposed to a private one.\footnote{153}{Lopez, 662 F.3d at 597.} As a result, the court held that the enforcement scheme and right to petition demonstrate a clear indication that Congress did not intend to create a private right of action and affirmed the district court order to dismiss.\footnote{154}{Id. at 598.}

The trend eventually made its way to the Fifth Circuit in \textit{Stokes v. Southwest Airlines}.\footnote{155}{Stokes v. Sw. Airlines, 887 F.3d 199 (5th Cir. 2018).} In \textit{Stokes}, Kellie Stokes sued Southwest Airlines (“Southwest”), on behalf of her autistic son, for preventing them from boarding.\footnote{156}{Id. at 201.} Allegedly, the agents at the gate believed her son’s behavior to be too disruptive, and a pilot had been rude to them the day before.\footnote{157}{Id.} Initially, Stokes filed a lawsuit asserting claims that Southwest breached the ADA, but when Southwest moved to dismiss the ADA claim, Stokes withdrew her ADA claim and added an ACAA claim.\footnote{158}{Id.} The district court found that the ACAA did not create a private right to action, and that only the federal government has the right to bring a lawsuit under the ACAA.\footnote{159}{Id.} The court granted Southwest’s motion to dismiss.\footnote{160}{Stokes, 887 F.3d at 201.}

Upon plaintiff’s appeal, the Fifth Circuit Court of Appeals asked the question that \textit{Love}, \textit{Boswell}, and \textit{Thomas} all asked: did Congress intend to create a private right of action when enacting the ACAA?\footnote{161}{Id.} The court began its analysis by stating that “[w]hether a given statute should be enforceable through private civil lawsuits is . . . fundamentally up to Congress,” and noted that Congress often makes it clear when a private right is created.\footnote{162}{Id. (citing Alexander v. Sandoval, 532 U.S. 275, 286 (2001)).} Other times, however, Congress either only provides for criminal penalties or leaves enforcement of a civil statute up to an administrative agency.\footnote{163}{Id.} When such a circumstance arises, “a private cause of action will not be created through judicial mandate.”\footnote{164}{Stokes, 887 F.3d at 201 (citing Ziglar v. Abbasi, 137 S. Ct. 1843, 1856 (2017)).} The court recognized that, prior to \textit{Sandoval}, judicial history showed a willingness to imply private rights where Congress did not expressly create one.\footnote{165}{See \textit{id.} at 201-02.} The trend toward preventing this type of judicial inference culminated in \textit{Sandoval}, which remains the standard for determining whether a private right exists.\footnote{166}{Id. at 202.}
The court found that, since *Sandoval*, every circuit to face the issue of whether the ACAA creates a private right of action has concluded that it does not.\textsuperscript{167} These other circuits explained that while the ACAA prevents discrimination against disabled passengers, it “does not expressly provide a right to sue the air carrier.”\textsuperscript{168} Through this analysis, the court found that the ACAA, when combined with other aviation statutes, forms an administrative scheme that was designed to help protect the rights of disabled passengers, thus, creating no private right of action.\textsuperscript{169} In fact, the ACAA itself specifically provides that the DOT is in charge of enforcement.\textsuperscript{170} Agreeing with *Boswell* and *Love*, the court determined that the ACAA did not create a private right of action, noting that language creating such a right is missing from the statute.\textsuperscript{171} Therefore, the court held that the ACAA does not create a private right of action and affirmed the district court’s order to dismiss the case.\textsuperscript{172}

It is important to note the role that the Fifth Circuit played in the history of ACAA interpretation. As noted above, the Fifth Circuit decided *Shinault*, and the court in *Stokes* addressed this at the end of its opinion. While acknowledging that the court once held the opposite of its holding in *Stokes*, it also recognizes that its holding in *Shinault* is preempted by the United States Supreme Court’s opinion in *Sandoval*.\textsuperscript{173} The *Stokes* court further discusses that it has the obligation to follow the new change in law, especially when the change comes from the United States Supreme Court overruling such precedent.\textsuperscript{174} This section of the opinion is important because it makes apparent just how much the *Sandoval* decision impacted ACAA litigation. *Shinault* allowed for an implied right of action; a door that was promptly slammed shut by the express provision in *Sandoval* requiring congressional intent. As it stands, *Sandoval* is the controlling case in ACAA interpretation, and it continues to be the primary point of discussion for any case that decides the question of whether the ACAA creates a private right of action.\textsuperscript{175}

\textsuperscript{167} Id. (citing *Lopez v. Jet Blue Airways*, 662 F.3d 593, 597-98 (2d Cir. 2011)); see also *Boswell v. SkyWest Airlines, Inc.*, 361 F.3d 1263 (10th Cir. 2004); *Love v. Delta Air Lines*, 310 F.3d 1347 (11th Cir. 2002).

\textsuperscript{168} *Stokes*, 887 F.3d at 202 (quoting *Lopez*, 662 F.3d at 597).

\textsuperscript{169} Id. at 202-03.

\textsuperscript{170} Id. at 203; see 49 U.S.C.S. § 41705 (LEXIS through Pub. L. No. 118-19).

\textsuperscript{171} *Stokes*, 887 F.3d at 203.

\textsuperscript{172} Id.

\textsuperscript{173} Id. at 204.

\textsuperscript{174} E.g., id.

APPLYING THE DIFFERENCES BETWEEN THE ADA AND THE ACA

While the ACA has been interpreted to not provide a private cause of action, the ADA remains a way for disabled individuals to seek a remedy for injuries and discrimination resulting from their disabilities. However, the ADA specifically excludes aircrafts from their enforcement mechanism. This is not the only section in which the ADA excludes aircraft within sections and subsections of the ADA. In Title III alone, the exclusion of aircraft is specified twice; once in defining “fixed route systems” and once in defining “specified public transportation.” In excluding all aircraft from the definitions under the ADA, it was made clear that the ACA and the ADA are completely separate acts, that provide for separate enforcement mechanisms.

I. SERVICE ANIMALS

One place where the ACA and ADA diverge is regarding the treatment of service animals. As of March 15, 2011, a service animal (“service dogs”) has been defined as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability . . . [t]he work or tasks performed by a service animal must be directly related to the individual’s disability.” The following section will discuss three instances regarding the treatment of service dogs: two stories that fall under the provisions of the ADA and one account of policies furthered by the more relaxed provisions of the ACA.

The first story comes from an average place of public accommodation, a place where the ADA protects individuals with disabilities. In 2010, Jeffrey Crockett and his family attempted to bring his service dog, a German shepherd named Phineas, into a Days Inn (“Hotel”) in Tulsa, Oklahoma. Mr. Crockett and his family were denied access to their hotel due to the Hotel’s

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178. See id.
179. Id.
strict no pet policy, which the Hotel stated included his service dog. The Department of Justice ("DOJ") brought a lawsuit against the hotel’s owner in 2014, alleging it failed to modify its policies even after learning that Phineas was a service dog. In 2015, it appeared that the issue had officially been resolved when the DOJ announced that a settlement was reached, despite the attorneys for the Hotel disputing the claim. According to the DOJ, the terms of the settlement include additional training for Hotel staff as well as a payment of $5,000 to Mr. Crockett.

The second story bears a little more significance, as the ADA violation was committed by a group of attorneys. In 2011, the Southern District Attorney General sued the law firm Larkin, Axelrod, Ingrassia, & Tetenbaum (Larkin Axelrod), along with partner John Ingrassia, after they refused to allow a client into the office because of her service dog. The events at issue began in 2007, when Lauren Klejmont, who suffers from seizures and balance problems, hired Larkin Axelrod to assist her with a personal injury claim. Ms. Klejmont brought her service dog, Reicha, to the office for her first meeting with the attorneys. Reicha assisted Ms. Klejmont with numerous tasks, including picking up and carrying objects, detecting seizures, and assisting with balance. When she arrived, Mr. Ingrassia and another attorney, Gerald Marino, who were her representatives in the case, met her in the main waiting room and asked her to leave Reicha outside. Ms. Klejmont explained to the attorneys that she needed Reicha due to her disability, but they insisted she leave the dog outside due to Ingrassia being allergic to dogs.

Following this event, Ms. Klejmont sent the firm a letter complaining about the treatment she received when she arrived. Mr. Ingrassia sent a letter in response, stating he was unaware of her need for a service dog, and that he would have future meetings in the conference room, since the dog could not be in his office due to his allergies. However, despite Mr.

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182. Id.
183. Id.
185. Id.
187. Id.
188. Id.
189. Id.
190. Id.
191. Id.
192. Id.
193. Id.
Ingrassia’s promise, things did not change. In January 2010, Mr. Marino sent two letters that showed that he was unwilling to accommodate Reicha. In his letters, he stated he would only meet with Ms. Klejmont if she did not bring Reicha into the office or they could conduct future meetings from the parking lot, so long as Reicha remained in the car.

The events described above amount to a violation of the ADA. Under Title III of the ADA, places of public accommodation are prohibited from discriminating against their disabled customers. While the ADA does not expressly discuss service dogs, it does state that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases . . . or operates a place of public accommodation.” By denying her access to her service dog within the building, the attorneys discriminated against her in the “full and equal enjoyment” of the facilities and services, since she was ultimately unable to have the appointment at that time. Because the ADA specifically excludes air carriers, similar events, when applied to conduct on board an aircraft, however, do not constitute discrimination against a disabled individual.

While the ADA provides protections for individuals against unequal treatment relating to their service dogs, the ACAA does not. In fact, the language of the ACAA, much like the ADA, does not specifically reference service dogs. The main difference is that the ACAA does allow the DOT to require certain forms when traveling by aircraft. According to the DOT’s website, an airline may require two types of forms: an attestation of the animal’s health, behavior, and training; and an attestation that the animal can either refrain from relieving itself on the flight or can do so in a sanitary way. The second form only applies if the flight will last more than eight hours.

The requirement of these forms goes against the fair and equal treatment purpose of the ADA. The average passenger on a flight does not have to do anything additional to board, but having a service dog requires two separate forms that need to be submitted ahead of the flight. This is in stark contrast

194. Id.
195. Id.
196. Pierson, supra note 186.
199. See id.
201. Id.
to the language in the ADA, which reads: “It shall be discriminatory to afford an individual . . . on the basis of a disability . . . with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.”

Requiring additional paperwork and steps to board a plane is not “equal to that afforded to other individuals,” because those steps are non-existent and exist solely on the basis of the requirement for a service dog, something unique to disabilities. Under the ADA, the allowance of such practices would likely rise to the level of discrimination. However, under the ACAA, these practices are allowable, and several airlines use them.

Additionally, several airlines also include policies about the space onboard the aircraft that a service dog may occupy. Generally, the service dog may only occupy the space in front of the disabled passenger and may not encroach into the leg space of an adjacent passenger. This is difficult, as most service dogs are larger breeds, including golden retrievers, poodles, and German shepherds. Dogs of these sizes would have great difficulty and discomfort in fitting within the legroom of the disabled passenger’s seat, not to mention the increased discomfort to the disabled passenger. While the policies do not state what happens if the dog does have to encroach into another passenger’s space, the mere existence of these policies would be a violation under the ADA but are allowable under current ACAA law.

II. PUBLIC ACCOMMODATION

Service dogs are not the only way the ADA accommodates disabled individuals in a way denied to airline passengers under the ACAA. In many aspects of life, the ADA protects the interests of disabled individuals, including public transportation and places of public accommodation. The ADA

203. Id.
205. E.g., Delta Airlines, supra note 204; United Airlines, supra note 204; Southwest Airlines, supra note 204.
206. E.g., Delta Airlines, supra note 204; United Airlines, supra note 204; Southwest Airlines, supra note 204.
makes clear what it classifies as public accommodations in Title III. First, places of lodging, including, but not limited to, inns, hotels, and motels, are all covered in the provisions of the ADA as places where disabled patrons are protected.⁰⁹ Second, the ADA provides protection in restaurants, bars, and other places that serve food and drinks.²¹⁰ Third, places of exhibition entertainment, including concert halls and stadiums.²¹¹ In total, Title III discusses twelve specific forms of public accommodation and further includes vehicle and rail transportation.²¹²

Title III further defines what classifies as discrimination within the provisions of the ADA.²¹³ This section addresses a few of the most notable forms of discrimination, as applied to differences to the ACAA. The first provision of note pertains to the modification of policies.²¹⁴ It is discrimination against a person with disabilities for a place of public accommodation to fail to make “reasonable modifications in policies,” when modification is necessary for disabled persons to access these accommodations.²¹⁵ These are generally referred to as reasonable accommodations. Another form of action considered a violation of the ADA includes “a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.”²¹⁶ This section also includes a small carveout for situations where the entity can prove that the accommodation would “fundamentally alter” the nature of the good or service provided, or that offering such accommodation would “result in an undue burden.”²¹⁷ This again plays into the reasonable accommodation standard. These two provisions within the ADA demonstrate clear language defining what is, and subsequently is not, a violation.

As mentioned above, the ADA does not apply to aircraft, with specific portions of Title III specifically stating such.²¹⁸ Instead, all issues arising out

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²¹⁵. *Id.*
²¹⁷. *Id.*
of the treatment of individuals on aircraft are handled under the ACAA.\footnote{See Air Carrier Access Act, 49 U.S.C.S. § 41705 (LEXIS through Pub. L. 118-19).}  

The first thing to note is the lack of specific language defining what is discrimination under the statute. The ACAA immediately goes into defining on what grounds an airline shall not discriminate against a passenger.\footnote{Air Carrier Access Act, 49 U.S.C.S. § 41705(a) (LEXIS through Pub. L. 118-19).} According to the ACAA, airlines may not discriminate against an individual who has “a physical or mental impairment that substantially limits one or more major life activities,” the person has a record of the impairment, and the person is “regarded as having such impairment.”\footnote{Id.} Notice that there is nothing within this section that explains how discrimination is determined or what airlines need to do in order to prevent it. Subsection (c) is where Sandoval kicks in, as it starts by stating that the secretary of transportation will investigate all claims arising from the ACAA.\footnote{Air Carrier Access Act, 49 U.S.C.S. § 41705(c)(1) (LEXIS through Pub. L. 118-19).} The remainder of the statute states that the secretary of transportation will “publish disability-related complaint data in a manner comparable to other consumer complaint data” and “regularly review all complaints received by air carriers alleging discrimination on the basis of disability and shall report annually to Congress on the results of such review.”\footnote{Air Carrier Access Act, 49 U.S.C.S. § 41705(c)(2)-(3) (LEXIS through Pub. L. 118-19).}  

The differences between the ADA and ACAA are striking. Whereas the ADA specifically outlines what discrimination is, how to prevent it, and when it applies, the ACAA has no such provision. When comparing the two statutes, as well as established caselaw surrounding them, it is apparent that the ACAA is insufficient to address the difficulties experienced by disabled aircraft passengers. This is not how it needs to be, however, and change appears to be on the horizon. The following section will delve into proposed legislation in both the United States House of Representatives (“House”) and the United States Senate, and detail how the passage of the proposed amendment to the ACAA, or similar statute, would be to the benefit of disabled airline passengers across the country.

MOVING FORWARD: THE AIR CARRIER ACCESS AMENDMENTS ACT OF 2021

Despite the lack of a private right of action under the ACAA under current law, there is a small, but growing, trend toward change. The Air Carrier Access Amendments Act of 2021,\footnote{Air Carrier Access Amendments Act of 2021, S. 642, 117th Cong. (2021).} proposed in the Senate by Wisconsin Senator Tammy Baldwin, and the Air Carrier Access Amendments Act of
proposed in the House by Rhode Island Representative James Langevin, propose amendments to the ACAA that would allow for a private right of action for aggrieved airline passengers. The two bills, while proposed in separate chambers of Congress, are identical, so any reference to one has an identical reference to the other. Under section 4 of the Air Carrier Access Amendments Act, the ACAA would be amended to allow an aggrieved passenger to bring an action against an airline for any violations under the act. The amendment would employ a two-year statute of limitations for any action brought under the ACAA. Additionally, an aggrieved passenger would not be required to exhaust every other administrative remedy before resorting to private action, the right would be available from the moment the violation occurs. The amendment would also allow for a plaintiff to be awarded equitable and legal relief, including both compensatory and punitive damages. Plaintiffs could also be awarded reasonable attorney’s fees, reasonable expert fees, and costs of the action to the plaintiff.

The bill also incorporates language from the ADA, a feature that is not included under current law. Specifically, the bill proposes that “an air carrier may not . . . discriminate in the full and equal enjoyment . . . of air transportation,” and incorporates the language of the ADA in defining “full and equal enjoyment.” The amendment would forbid, among other things, the denial of opportunities to participate in and receive the benefits of, opportunities provided by an air carrier based on disability status; afford unequal opportunities to disabled passengers; deny opportunities to other passengers based on the disabilities of their traveling companions; or impose eligibility requirements that screen out individuals with disabilities from enjoying the full extent of the services and opportunities provided.

The requirement that airlines not impose eligibility requirements has a carveout for if the airline can “demonstrate that such criteria are necessary for the provision of the good, service, facility, privilege, advantage, accommodation, or other opportunity . . .”

226. H.R. 1696 § 4(a); S. 642 § 4(a).
227. See H.R. 1696 § 4(a); S. 642 § 4(a).
228. H.R. 1696 § 4(a).
229. Id.
230. Id.
231. Id.
232. Id.
233. H.R. 1696 § 4(a); see Americans with Disabilities Act, 42 U.S.C.S §12182(a) (LEXIS through Pub. L. 118-19).
234. H.R. 1696 § 4(a) (applying the meaning under section 302(a) of the Americans with Disabilities Act).
235. Id.
236. Id.
The proposed amendment to the ACAA would not only increase the rights of disabled airline passengers but would also amend the statute to include congressional intent, as required for a private cause of action under Sandoval. There is one major problem, and that problem applies to both the House and Senate bills. First, the House bill is unlikely to pass. The bill was proposed on March 9, 2021, close to two years prior to the writing of this Article. That same day, it was referred to the House Committee on Transportation and Infrastructure. On March 10, 2021, the House Committee on Transportation and Infrastructure referred the bill to the Subcommittee on Aviation. Since then, there has been no further action on this bill. Having been nearly two years since the matter was handed to the Aviation Subcommittee, it is unlikely the bill will be passed as it stands.

The same problem exists for the Senate bill. The bill was proposed on the same day as the House bill, March 9, 2021. The bill was subsequently read twice in the Senate and then referred to the Committee on Commerce, Science, and Transportation. Like the House bill, the Senate bill has not had any further action. It is equally unlikely to pass or receive any further discussion. While the proposal of these bills is a sign of a potential change in the way Congress views people with disabilities, the lack of action on these bills shows there is still a long way to go before there is full equality for disabled airline passengers.

**CONCLUSION**

Despite the recent attempt to extend the protections afforded to people with disabilities on airplanes, there is still a lot of work to be done. Following Sandoval, the Court made it clear that a statute needs clear language indicating a private right of action for a private citizen to seek a personal remedy. While Congress never foreclosed the possibility of a private right of action, as evidenced in the earlier decisions in Tallarico and Shinault, the ACAA has been interpreted to only provide administrative remedy. The language of the ACAA remains internally inconsistent with the holdings in Love, Thomas, and other cases discussing congressional intent. In prohibiting discrimination, the ACAA’s purpose mirrors that of the ADA, which does include a private right of action. The ACAA would be essentially powerless without the right for aggrieved passengers to seek private redress. In refusing to find congressional intent, courts have effectively stripped the ACAA of all

238. Id.
239. Id.
240. See id.
242. Id.
243. See id.
benefits, benefits that were designed to be a step forward for all disabled individuals in the country. The Supreme Court has not specifically decided the issue as applied to the ACAA, but the holding in Sandoval is unmistakable. It is now up to Congress to amend the ACAA to provide citizens with a private right of action, giving the statute the congressional intent required under Sandoval. Only Congress has the power to make things right and provide disabled airline passengers with a right of private redress for violations under the ACAA. This is a concern of the utmost importance for disabled passengers everywhere. Congress must act swiftly, as every day the ACAA remains unchanged, the rights and independence of people with disabilities are placed in jeopardy.