

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

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SUMAYA HUSSEIN, on behalf of herself and all:
others similarly situated,

Plaintiffs,

v.

SPIRIT AIRLINES, INC.,

Defendant.

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ARGUMENT 6

 I. The ACAA-

'HIHQGDQW 6SLULW \$LUOLQHV ,QF M366 to Dismiss \$LUOLQH
3ODLQW ~~COMPLAINT~~ Complaint with prejudice for failure to state a claim upon which relief
can be granted pursuant to [Rule 12\(b\)\(6\) of the Federal Rules of Civil Procedure](#).

in the provision of services relating to air travel while balancing its broader air transportation-related objectives.¹

In this context, the DOT has issued regulations that set forth detailed requirements relating to air carrier website accessibility for the visually impaired. See 14 C.F.R. § 382.43(c)(1) (adopting Web Content Accessibility Guidelines (WCAG) 2.0 Level AA accessibility standard); 14 C.F.R. § 382.43(c)(2) (requiring air carriers to test their websites with input from individuals with disabilities or members of disability organizations); 14 C.F.R. § 382.43(c)(4) (requiring air carriers to provide assistance through other channels to individuals who cannot use a website due to their disability).

7 KH \$ & \$ \$ ¶ V V W D W X W R U \ D Q G U H J X O D W R U \ U H J L P H U H
complaint made to it alleging discrimination by an air carrier on the basis of disability. See 49 U.S.C. § 41705(c). In enforcing its regulatory regime, the DOT has the authority to revoke an air carrier's operating certificate (see 49 U.S.C. § 41110(a)(2)(B)), impose fines (see id. § 46301), initiate an enforcement action in a federal district court (see id. § 46106), or request that the Attorney General bring a civil enforcement action (see id. § 46107(b)(1)). The ACAA also requires that the DOT regularly publish disability-related complaint data; review the data and report annually to Congress on the results; and implement a plan to provide technical assistance to air carriers and individuals with disabilities in understanding the rights and responsibilities set forth in the ACAA. See 49 U.S.C. § 41705(c)(2)-(4).

In issuing ACAA-based website accessibility regulations, the DOT has stressed the L P S R U W D Q F H W K D W D L U F D U U L H U V E H V X E M H F W R Q O \ W R
ensure uniformity in the application of the ACAA to air carriers and to avoid creating a

¹ See 49 U.S.C. § 101(a) (Congress created WKH '27 WR GHYHORS³ WUDQVSRUWDWLRQ FRQWULEXWH WR SURYLGLQJ IDVW VDIH HILFLHQW DQG FRQYI

NATURE OF ALLEGATIONS IN THE CLASS ACTION COMPLAINT

Plaintiff alleges that she is ³ D Y L V X D O and legally blind person who requires screen- U H D G L Q J V R I W Z D U H W R U H D G Z H E V L W H N O F R Q W X V Specifically, Plaintiff alleges that on May 22 and 24, 2023, she attempted to book round-trip W L F N H W V I R U D L U W U D Q V S R U W D W L R Q I U R P & K L F D J R W R / R unable to complete her purchase due to the incompatibility of the Website with her screen-reading program. See id. ¶¶ 20-24. On June 2, 2023, Plaintiff filed the instant action.²

3 O D L Q W L I I F O D L P V W K D W 6 S L U L W \$ L U O L Q H V ¶ : H E V L W H software products and, W K X V 3 O D L Q W L I I Z D V ³ G H Q L H G W K H E H Q H I L W I W R D F T X L U H I U R I B. ¶ 24 W K H : H E V L W H `

Stat. 61 (2000) (amending the ACAA to require, *inter alia*, the DOT to investigate each complaint of air carrier discrimination on the basis of disability). The ACAA further requires that the DOT regularly publish disability-related complaint data; review the data and report annually to Congress on the results; and implement a plan to provide technical assistance to air carriers and individuals with disabilities in understanding the rights and responsibilities set forth in the ACAA. See 49 U.S.C. § 41705(c)(2)-(4).

D. The DOT Has Promulgated a Comprehensive ACAA-Based Regulatory Regime Specifically Addressing Air Carrier Website Accessibility

On November 23, 2013, the DOT issued regulations specifically governing air carrier website accessibility approximately five (5) years after providing notice of its intention to issue such regulations. See 14 C.F.R. § 382.43; *Nondiscrimination on the Basis of Disability in Air Travel*, 78 Fed. Reg. 67884. Before issuing the final regulations, the DOT received 84 comments from the aviation industry, advocacy organizations,⁴ academic institutions, and

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Nondiscrimination on the Basis of Disability in Air Travel, 78 Fed. Reg. 67884-86. The DOT

also examined the costs and benefits of the website accessibility requirements and concluded that
³WKH TXDOLOWDIFIABLE BENEFITS OF THE Web site [. . .] accessibility requirements
combined with the quantifiable

2008, Web site Content Accessibility Guidelines (WCAG) 2.0 for Level AA . 14.C.F.R. §
382.43(c)(1) see [Nondiscrimination on the Basis of Disability in Air Travel](#) 78 Fed. Reg.
67882

In this context, the DOT noted the necessity of website accessibility regulations, stating

Today

of the ADA to transportation services provided by public entities] addresses specifically public bus and public rail transportation. Part I of the subtitle deals with all public transportation other than transportation by aircraft which Congress has recently addressed in the Air Carrier Access Act. . . . H P S K D V L V D G G H G

C. No Reported Decision Has

D. The Longstanding Views of the DOJ and DOT Confirm that the ADA Does Not Apply to Air Carrier Website Accessibility

Both the DOJ and the DOT, the agencies tasked with promulgating and enforcing regulations under the ADA and ACAA, respectively, have issued commentary or implementation guidance demonstrating that the ADA does not apply to air travel services provided by air carriers. Specifically, the DOJ, which is authorized by Congress to promulgate ADA implementing regulations [see 42 U.S.C. § 12186\(b\)](#) has explained that the ADA does not apply to air carriers

For example, a quick service restaurant at an airport is, as a public accommodation, subject to the title III requirements, not to the ACAA requirements. Conversely, an air carrier that flies in and out of the same airport is required to comply with the ACAA, but is not covered by title III of the ADA.

[Nondiscrimination on the Basis of Disability: Public Accommodations and in Commercial Facilities, 75 Fed. Reg. 56246 \(emphasis added\)](#) [see Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions, 77 Fed. Reg. 7804](#) (The DOT has stated that

III. Amendment of the Class Action Complaint Would be Futile Because the ACAA Does Not Confer a Private Right of Action

Amendment of Plaintiff's Class Action Complaint would be futile because the ACAA exclusively governs this action, and the ACAA does not confer a private right of action to litigants. See, e.g., [Stokes](#), 887 F.3d at 205. Thus, Plaintiff's motion to dismiss is [Gandhi](#), 721 F.3d at 869.

IV. Plaintiff's Motion for an Administrative Complaint

If Plaintiff wishes to pursue her claims on the DOT Website, she is limited to making an administrative complaint through the DOT Website.

DOJ. Further, subjecting air carriers to regulation under two different statutory schemes and by two different agencies would undercut the regulatory uniformity that has been a key to the success of air carrier disability accessibility. See [Nondiscrimination on the Basis of Disability in Air Travel](#), 78 Fed. Reg. 67911³⁷ KLV RXWFRPH KDV ODUJHO\ FRPH DER throughout the U.S. market being freed to focus their resources on meeting a single regulatory DQG HQIRUFHPHQW VFKHPH IRU HQVXULQJ DFFHVVLELW [ñ

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CERTIFICATE OF SERVICE

I hereby certify the foregoing