

The Final Nail in the Coffin for Private Lawsuits Under the ACAA?

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The Air Carrier Access Act (ACAA) of 1986 generally prohibits airlines from discriminating against disabled passengers. For a time, courts presumed that the ACAA also allowed passengers claiming discrimination to directly sue airlines for violations of the ACAA. In 2001, though, the Supreme Court, addressing a different statute, held that courts should allow a private cause of action only when a statute's language affirmatively shows that Congress intended one. The Fifth Circuit Court of Appeals had previously permitted private lawsuits under the ACAA. In the recent ***Stokes v. Southwest Airlines***, the Fifth Circuit had an opportunity to revisit the viability of private lawsuits under the ACAA in light of the Supreme Court's directive, and concluded that such lawsuits were no longer permitted.

Kellie Stokes claimed that Southwest Airlines prevented her family from boarding a flight because the gate agents considered her autistic son's behavior to be disruptive. As a result, she contended, her son suffered physical, emotional, and mental injuries. She sued the airline under the ACAA. Southwest moved to dismiss, arguing that the ACAA does not provide a basis for private individuals to sue. The trial court agreed and dismissed the suit, and Stokes appealed.

The Fifth Circuit looked at precedent and the language of the ACAA itself to determine whether a private right of action was permitted. The Fifth Circuit noted that every court to address this issue since 2001 has concluded that no private right of action exists under the ACAA. And, while the ACAA itself is silent with respect to a private right of action, it is clearly intended as part of a comprehensive *administrative* scheme designed to vindicate the rights of disabled passengers. Under the statute, a discriminated-against person may notify the Department of Transportation (DOT) of the discrimination, but it is up to the DOT alone to investigate any violations and initiate any enforcement actions. This comprehensive administrative scheme, said the court, demonstrates that Congress did not intend a private right of action.

It is difficult to argue that the intention behind the ACAA is anything but laudable, and there may be instances of discrimination so egregious that they practically cry out for a jury to weigh in. However, given *Stokes* and other recent decisions, it has become clear that Congress never intended that anyone other than the DOT

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has the right or authority to enforce the anti-discrimination provisions of the ACAA. Thus, the *Stokes* opinion should serve as the death knell for private lawsuits under the ACAA.

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