

The space problem is exacerbated today because all airline passengers, including Mr. Smith and Mr. Sweeting, are forced into smaller areas on most carriers so the companies can sell more seats. In the case of Kevin Smith, Southwest Airlines did place him on a subsequent flight and offered him a \$100 voucher.

It is unclear whether this air travel situation raises civil liberties concerns (the subject of this chapter) or civil rights concerns (the subject of the next chapter). The rights of passengers have to be balanced and all sides have the right to express their views, whether it be to promote comfort or to prevent humiliation (civil liberties). There is also an issue of fairness concerning whether obese persons are the object of discrimination (civil rights). The fairness of airline policies requiring large persons to buy two tickets is complicated by the fact that the policies are not always enforced. When they are enforced, however, the result is often humiliation suffered by the large passenger who is singled out in front of a plane full of passengers and forced to deplane. Advocates for the obese argue that charging large persons for an extra seat is not the solution. Peggy Howell, the public relations director at

the National Association to Advance Fat Acceptance (NAAFA), says such policies "add yet another way to discriminate against already marginalized fat people. We see this more as an attempt at getting money out of the consumer's pocket than any concern for our well-being . . ."

The NAAFA is a nonprofit civil rights organization. Its existence suggests that the prevalence of obesity in the United States is a more complex issue than many believe. Without a doubt, the United States leads the world in the highest percentage of obese citizens. Yet as Americans are getting steadily heavier, the ideal societal body type remains extremely thin. This paradox creates discriminatory behavior in society. The pervasive cultural prejudice directed toward fat people in the United States is called "fatphobia," "sizeism," or "weightism." Whatever its name, such discriminatory behavior can have real consequences in people's lives.

Two scholars have concluded that there is a "pound penalty" for heavy employees, who make less money than their thinner peers.¹¹ Even if a pound penalty can be proven by an employee, however, Michigan is the only state that bans discrimination based on weight. The problem, however, is that simply

being overweight does not qualify as a disability. Given such realities, someday weight discrimination may become more widely accepted as a form of prejudice just like racial, gender, ethnic, age, and sexual orientation prejudice. If that acceptance occurs, then weight discrimination may begin to receive legal protection. You will note in the next chapter that obese persons are not yet a group that is traditionally thought of in terms of civil rights protections.

¹⁰ Michelle Higgins, "Excuse Me, Is This Seat Taken?" *New York Times*, February 28, 2010.

¹¹ *ibid.*

¹² Charles Baum and William Ford, "The Obesity Wage Penalty," *Health Economics*, September 2004; Kelly D. Brownell and Rebecca Puhl, "Stigma and Discrimination in Weight Management and Obesity," *The Permanente Journal*, Summer 2003.

themselves quickly and painlessly. The Court, however, has upheld state laws criminalizing assisted suicide, citing the state's interest in preserving human life and protecting the vulnerable group of ill and predominantly elderly patients. A majority of the public is opposed to the concept as well.

CIVIC ENGAGEMENT AND CONSTITUTIONAL LIBERTIES

Because so many of the political issues facing the nation are settled in the courts, organized interest groups inevitably have fought legal battles and sought judicial support for their views. Lawsuits are especially attractive political instruments for individuals or small groups whose size, limited financial resources, and lack of prestige reduce their influence in the electoral process. Although they may lack the ability to influence the outcome of elections, individuals and smaller groups can make persuasive constitutional and moral arguments to courts. The Jehovah's Witnesses, for instance, have won over 70 percent of their cases before the nation's highest court. As recently as 2002, their legal corporation, the Watchtower Bible