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Bahig Saliba

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[REDACTED]
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Bahig Saliba
Plaintiff,
v.
American Airlines, Inc.;
The Allied Pilots Association;
As Agent Representative
Of American Airlines Pilots
Voting Yes for a New 2023 CBA
Defendants,

Case No.
COMPLAINT FOR EMERGENCY
DECLARATORY JUDGMENT and
PERMANENT INJUNCTION ORDER

EMERGENCY PERMANENT INJUNCTION

JURISDICTION

This Court has jurisdiction under 28 U.S Code §1331- Federal question.

INTRODUCTION

Come now, *Pro Se* Plaintiff, Captain Bahig Saliba, who provides transportation¹ service in the American Airlines, Inc. (AA) transportation system, as represented by the Allied Pilots Association² (APA), and files this complaint for an Emergency Declaratory Judgment and Permanent Injunction Order enjoining the parties, and all the AA pilots who voted in favor of a new Collective Bargaining Agreement (CBA), ratified on August 21, 2023, to suspend the implementation of such agreement pending the striking of unlawful terms that violate the rights and obligations of the Plaintiff under the Federal Aviation Act of 1958, his constitutional right to contract, right to a trial by jury, and Public Policy.

The Order’s intent is to compel AA and APA to remove or strike language in Section 24 Paragraph S 1,2 (24S), of the newly ratified³ CBA. Such language was inserted in the eleventh hour⁴ after almost four years of negotiations, which was approved by the APA Board of Directors and AA, and ratified as the new Collective Bargaining Agreement by the AA pilots’ vote on the 21st of August 2023. The Language in 24S unlawfully attaches conditions to the pilot FAA issued Medical Certificate, a protected right and public policy under the Federal Aviation Act of 1958, violates public policy, and the Plaintiff’s Constitutional Right to contract and Trial by Jury in the defense of his FAA Medical Certificate and contractual obligations to the People.

If allowed to proceed, such agreement will continue the irreparable harm caused by the Defendants, diminish public safety, and deprive the Plaintiff of rights secured by the Constitution of the United States of America. A permanent injunction must be installed barring the parties from keeping or including any such language in the current or any future CBA.

¹ As defined under 49 US Code §42112
² The Allied Pilots Association is the union representing the pilots in the service at American Airlines, Inc. under the provisions of the Railway Labor Act.
³ Date of ratification was August 21, 2023.
⁴ 24S was inserted on August 1, 2023.

1 **INHERENT RIGHTS**

2 **Public Right of Transit:** The Federal Aviation Act of 1958, Section 104, Public Right of
3 Transit.

4 *“There is hereby recognized and declared to exist in behalf of any citizen of the*
5 *United States a public right of freedom of transit through the navigable airspace of the*
6 *United States.”*

7 Some United States citizens, such as the Plaintiff, become pilots and exercise their
8 right to transit the navigable airspace by piloting aircraft themselves, while others exercise
9 their right by employing the services of professional pilots who provide⁵ transportation.
10 The right is not created by the Act, it is declared and affirmed to exist.

11 The Act is public policy, and the FAA, the agency created by the Act, sets the rules
12 and regulations governing and promoting safety in aviation. Pilots who exercise their right
13 must meet technical and physical and mental standards set by the FAA under 14 CFR Parts
14 61 and 67 respectively. If a person meets set standards under §67.3 that are⁶, “...prescribed
15 by this part, based on medical examination and evaluation of the person’s history and
16 condition,” the person “...is entitled to an appropriate medical certificate.” Thus, the
17 certification a person receives from the FAA is an extension of the inherent right as declared
18 and affirmed by the Act.

19
20 **Right to an FAA Medical Clearance:** The Medical Certification Process.

21 The FAA has created a “wall” separating air carrier certification and pilot medical
22 certification. As the agency, the FAA holds authority created by the Act to establish the
23 medical standards that pilots must maintain at all times while operating or intending on
24 operating aircraft.

⁵ 49 U.S. Code §42112 (b)

⁶ 14 CFR §67.3

1 Simply put, the People who hold the power, through Congress, created the FAA who
2 is their agent and representative. The FAA sets the standards and contracts, or creates
3 obligations, with the pilots who operate aircraft in the National Airspace or carry people
4 commercially. Obligations of carrier operators differ from those created by pilots in that a
5 pilot's medical is a right that he may exercise privately and commercially, and the pilot is
6 expected to maintain the FAA medical standard of his own volition and without
7 interference. That is, only pilots may make health decisions in order to maintain the FAA
8 medical standard. Pilots are issued Medical Certificates which are contractual obligations
9 with the People, therefore, only pilots can create such obligations to the People that no other
10 entity may be a party to.

11 A pilot who requests the medical clearance must make statements of health on form
12 FAA 8500-8 and sign under penalty of 18 U.S. Code §1001 which carries a \$250K fine or
13 5 years in jail or both for making any false statement or falsifying any record. Such
14 statements are only valid when pilots make them of their own cognition.

15 After an examination, and if a pilot meets the standards, he then makes a contractual
16 obligation to continually meet the standards for the duration and signs a document along
17 with the Aeromedical Examiner⁷ (AME), called the Medical Certificate, creating the
18 agreement and obligation, or contract between the parties.

19 The FAA has the obligation to set and protect⁸ the standard so a pilot may not be left
20 chasing the standard to remain in compliance, and the pilot's obligation is to maintain said
21 standard. Any infringement or invasion of public policy by third parties will upset the
22 balance of obligation rendering a pilot illegal to operate aircraft by invalidating his medical
23 certification.

⁷ The FAA designates a number of medical doctors to conduct the examination on behalf of the People. They are referred to as AMEs.

⁸ The FAA has been silent on the matter and there are many calls for the FAA to take action to protect the standard from air carrier interference.

1 There are roughly 730K pilots who hold FAA issued medical certificates in the US
2 and roughly 100K are airline pilots. That is roughly .02 % of the population that are
3 commercial pilots who are subject to further obligations.

4 A commercial airline pilot must make a health statement every time he reports for
5 duty as required under 14 CFR Part 117. It is a fitness for duty statement, and yet another
6 obligation to the People, as the pilot gets closer to operating the aircraft that carries them.

7 The Plaintiff must then make another fitness of health declaration and come to an
8 agreement with the aircraft dispatcher that the flight can be operated safely before the flight
9 can commence. These are all contractual obligations that are dependent on one critical
10 parameter; the physical and mental condition of the pilot, which only the pilot, who holds a
11 valid FAA clearance, can determine prior to entering into such obligation. Without
12 accepting the pilot's liability, the airline may not be party to such contractual obligations.

13 Of importance to note is that the FAA does not require any medical procedure or
14 treatment for the issuance and maintenance of the Medical Certificate. The FAA's scope is
15 that of setting the standard for examination of the applicant. If the pilot wishes to follow
16 certain medical treatments or procedures, the FAA may provide guidance for what is
17 allowable, however it is always the pilot who makes such decisions under 14 CFR §61.53.

18
19 **Right to Contract:** United States Constitution, Article I, Section 10.

20 “No state shall enter into any treaty, alliance, or confederation; ...pass any bill of
21 attainder, ex post facto law, or law impairing the obligation of contracts...”

22 It is the right of the Plaintiff to enter into such contractual agreements or obligations
23 with the People, as described above, and the courts should not impair or allow third party
24 impairment or interference in such obligations, nor should courts allow other parties, such
25 as American Airlines, The Allied Pilots Association, or other pilots who contract with AA,
26 to usurp the rights of others in the course of collective bargaining and the creation of CBA's.

1 The new CBA between AA and APA, under authority not granted, usurps the
2 constitutional right of a pilot to contract and forces terms that are unlawful, which then are
3 forced to be accepted by a majority vote as contractual rights. The Plaintiff has never waived
4 any of his constitutional rights or any rights under contract not related to rates of pay, work
5 rules, or working conditions, and does not confer any authority or right in AA or APA to
6 dictate any conditions affecting his or any other pilot’s medical standards. This Court must
7 protect the constitutional rights of the Plaintiff and public policy.

8
9 **Right to a Trial by Jury:** United States Constitution, Seventh Amendment,

10 *“In Suits at common law, where the value in controversy shall exceed twenty dollars,*
11 *the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise*
12 *re-examined in any Court of the United States, than according to the rules of the common*
13 *law.”*

14 As discussed above, a pilot holding an FAA Medical Certificate is obligated to
15 maintain the standard of issue at all times. Furthermore, it is the duty of the person who
16 holds such a certificate, if the person wishes to exercise his right, to protect such an
17 obligation from any invasion by third parties. In other words, the person must protect the
18 contractual agreement made with the People and exercise his right to a trial by jury, if he
19 must, in the defense of such contract. A pilot may not lawfully surrender that authority to
20 AA. Such contractual agreement in which a pilot’s labor provides transportation to the
21 People is spelled out in 49 U.S Code §42112 as well as the Act. The Act and §42112 detail
22 the contractual duties of air carriers towards the pilots and co-pilots who are “providing”
23 transportation under contract. Nowhere in the law does it give AA or APA any authority to
24 dictate in contractual terms any procedures, treatments, or qualifications, respecting the
25 pilot’s medical certification or even enter into any such agreements attached to such right
26 and public policy.

1 Any language included in the CBA will have the detrimental effect of depriving the
2 pilot the right to a trial by jury by shifting jurisdiction from the courts to the administrative
3 process for resolving disputes under the Railway Labor Act (RLA). A dispute over terms
4 already agreed to in the CBA, as they will certainly arise in this case, are minor and may,
5 at the discretion of the union, reach binding arbitration, which is a detriment to the pilot's
6 right and public policy.

7 Reference *Norris v. Hawaiian Airlines, Inc.*, at 646 “*The arbitral forum must be*
8 *authorized and competent to resolve the dispute brought before it. “[A]rbitration is a*
9 *continuation of the collective-bargaining process,” and the role of the arbitrator is to*
10 *interpret the labor contract and to apply the agreement to the facts of a dispute. On the*
11 *other hand, the arbitrator “ordinarily cannot consider public interest, and does not*
12 *determine violation of law or public policy.”* As such, presenting any dispute to an
13 arbitrator must be lawful and legal and an arbitrator must be competent in resolving such a
14 dispute. A dispute over a pilot Medical Certificate is not within the scope of arbitrators for
15 it is a right not created by a CBA and is public policy under the law.

16 When a dispute arises out the new terms in the CBA, the Plaintiff will be deprived
17 the right to pursue a claim in court. Currently, the Plaintiff is pursuing legal action against
18 both AA and APA for interfering in his medical standards and their efforts to become a
19 third party to his contractual obligations to the People. Under the new CBA terms, which
20 are a detriment to public policy, court will lose jurisdiction and will not be available to the
21 Plaintiff in the defense of his right and obligations.

22 23 **APA UNDER THE RAILWAY LABOR ACT**

24 APA is the pilot union representing the pilots in the service of AA. The scope of
25 APA under Title 45, Chapter 8, §152, (Also under 49 U.S. Code §42112 (d)) is to secure
26 for the pilots a CBA concerning rates of pay, rules, and working conditions. A CBA, under

1 the auspices of the RLA, creates certain rights enjoyed by the pilots. A pilot Medical
2 Certificate is **NOT** a right created by, nor in any way negotiable or negotiated for, under the
3 RLA. It is beyond the scope of APA statutory authority to negotiate terms attached to the
4 FAA Medical Certificate of a pilot that give the airline the right to impose any conditions
5 which may affect the outcome of a physical examination conducted by the FAA or dictate
6 the qualifications of a pilot predicated on whether the pilot received any medical procedure
7 or treatment dictated by AA. The FAA does **NOT** require any medical procedure or
8 treatment of pilot applicants for the issuance of a Medical Certificate. The FAA simply
9 requires the applicant to meet the medical standard and AA may not use pilots who meet
10 other than the FAA medical standards. AA's recent history has been in contravention to
11 the law and this CBA would pave the way for AA to continue on that path unimpeded.

12 APA may not subject an inherent right, such as the pilot FAA Medical Certificate,
13 to "interpretation and application" under the RLA. APA may not extend the scope of their
14 statutory authority to negotiate terms affecting public policy and the safety of the public.
15 Such public policy, and the standards created under the Act, are reserved to the FAA, and
16 any and all health decisions made to meet and maintain the standards of an FAA physical
17 examination under 14 CFR Part 67, are reserved exclusively to the pilot. In this case, APA
18 has invaded public policy, extended its authority beyond its statutory limits, and negotiated
19 terms attached to the pilot FAA Medical Certificate that are a detriment to the pilot in the
20 service of the People, as well as a detriment to public safety.

21 The clever language in the CBA titled "Medical Protections and Qualifications" is
22 ripe for "interpretation and application" disputes, which are "minor." Any dispute over any
23 medical demands by AA, as we have experienced during the announced pandemic, will be
24 confined to the Railway Labor Act grievance machinery, depriving the Plaintiff his
25 constitutional right to a trial by jury, which may, pending a determination by APA, end in
26 binding arbitration. That is not acceptable.

1 Arbitrators are confined to interpretation and application of the collective bargaining
2 agreement. *See Steelworkers v. Enterprise Wheel & Car Corp @ 597.* The arbitrator, in
3 other words will not interpret the law governing medical certificates. *See Paperworkers v.*
4 *Misco Inc.* where, more importantly, W.R. Grace was cited. In *W. R. Grace*, we recognized
5 that "...a court may not enforce a collective-bargaining agreement that is contrary to public
6 policy," and stated that "...the question of public policy is ultimately one for resolution by
7 the courts." There is no question that a medical certificate is public policy, and AA and
8 APA have exceeded the scope of their authority. What they have created in this agreement,
9 is a condition where a pilot who is demanded to undergo any treatment is shut out of the
10 court system and forced to follow the grievance process under the RLA, which is long and
11 drawn out. In the meantime, and to his detriment and that of the public and their safety, the
12 pilot is forced to comply with the demand of the airline. In other words, the airline will use
13 the Railway Labor Act to contractually force a medical treatment on pilots.

14 Furthermore, the parties reached an agreement respecting new hire pilots. By stating
15 the terms of 24S (1) does not apply to new hire pilots, APA conferred authority upon AA,
16 authority APA itself does not have, to dictate required employment medical standards for
17 new hires. New Hire pilots must also hold an FAA Medical Certificate and must comply
18 with the standards under 14 CFR Part 67.

19 If AA believes they have the authority to dictate medical requirements for new hire
20 pilots, then it follows they do not need such terms in the CBA. And the Plaintiff, in
21 accepting such terms, and he does not, is invading the new hire pilots' rights under the Act
22 and their constitutional right to a trial by jury. Additionally, the plaintiff did not agree to
23 assuming liability for harm, injury, or even death to new hires as a result of AA's policies
24 and new hire requirements. APA has taken the position that they do not negotiate for new
25 hires because they do not represent them, but APA has just done exactly the opposite and
26 acted well outside their statutory authority.

1 AA is currently dictating a requirement that is not under public policy and in direct
2 violation of the law. 24S codifies such unlawful practice that allows AA to maintain
3 authority and control over the medical standards of such pilots. Again, AA and APA,
4 without authority, not only invaded, but superseded, as well as replaced the FAA medical
5 standards with their own modified medical standards. That must not be allowed in the
6 interest of safety and public policy.

7 8 AA UNDER THE ACT

9 AA is an airline carrier subject to the Act, Title IV- Air Carrier Economic
10 Regulation. AA operates under a Certificate of Public Convenience and Necessity and must
11 comply with all the rules and regulations enacted by the FAA. The Act, under Title IV,
12 Compliance with labor Legislation, K (5) defines the terms “pilot” and “copilot” as
13 someone “...who is properly qualified to serve as and holds a currently effective airman
14 certificate authorizing him to serve as, such pilot or copilot.” (Emphasis added) Such
15 requirement is also stated under 49 U.S. Code § 42112 and again under 14 CFR 121.383.
16 AA may not use any other pilots who do not meet the standards set by the FAA under 14
17 CFR Part 67, and pilots AA uses must strictly comply with and meet the standards. The
18 standards are public policy that may not be modified by AA.

19 By being able to enforce, with the aid of APA, by way of incentives, coercion and
20 threat of termination, vaccinations that the majority of AA pilots received following the
21 deployment of such treatments during the announced pandemic, AA effectively created a
22 new medical standard or a “second-tier” medical standard that differs than that of the FAA
23 medical standard, thus; it is no longer clear that the pilots who currently occupy the flight
24 decks of AA aircraft lawfully meet the FAA medical standard. AA requires new hire pilots
25 to undergo such treatments or vaccinations at this time as terms of employment. A new hire,
26 or even current AA pilots, who accept these terms as a condition of employment or

1 continued employment, could not possibly be doing so of their own volition, and as such,
2 AA pilots may be in violation of the 14 CFR Part 67. Under this agreement AA is altering
3 the FAA standard to reflect their own in the selection of new hire pilots.

4 Engaging APA in contractual agreements that create terms that attach to and affect
5 a pilot medical certification, and the methods in which AA utilizes the pilot workforce, is a
6 departure from historical practice and an invasion of public policy. In the newly ratified
7 CBA, even when all pilots must and do hold a valid FAA Medical Certificate as required
8 by law, AA created a scheme in which to be selective in the use of its pilots based on AA
9 created medical requirements. There is no law that allows AA, based on FAA medical
10 certification, to create a subset of qualifications. That is to say, if all pilots must hold a
11 First-class Medical Certificate, and all pilots do hold said certificate, then all pilots are
12 equally qualified medically under public policy.

13 14 The CBA Term in Dispute

15 **Medical Protections and Qualifications**

16
17
18 **1. The Company may not require a pilot, at any time, to undergo any**
19 **medical procedure(s), other than those required by the FAA to maintain**
20 **a First Class Medical Certificate, unless required elsewhere in this**
21 **Agreement. This provision does not apply to pilot new-hire**
22 **requirements.**

23 **2. A governmental travel requirement which requires**
24 **vaccination(s)/inoculation(s) for entry is considered a qualification for**
25 **any flying to that destination. Once the Company has identified a**
26 **destination(s) with a governmental travel requirement for entry, pilots in**
27 **the bid status(es) with flying to such destination(s) will self-report their**
28 **respective vaccination/inoculation to the Company for scheduling**
29 **purposes. If a pilot does not meet a governmental travel requirement to**
30 **operate to an international or domestic destination due to their**
31 **vaccination/inoculation status or for other medical reasons, the pilot will**
32 **be bid restricted or removed from Sequences to such destination(s)**
33 **without pay or credit protection. Any Sequence containing flying to a**
34 **destination with a governmental travel requirement due to**
35 **vaccination/inoculation status will be built with the requirement as a**
36 **qualification if known at the time the Sequence is built.**
37

1 As discussed above, this term in the agreement was introduced in the eleventh hour
2 of negotiations just as AA injected an additional one billion dollars value to the four-year
3 contract, matching that of United Airlines' agreement in principle.

4 At first look, 24S, which resides in General Section 24 paragraph S of the CBA,
5 appears benign and that it conforms to the desires of the pilots who do not want AA to
6 infringe on their medical certification. However, and in reality, it serves quite the opposite
7 purpose; it violates the pilots' rights and public policy. Language in 24S forces pilots to
8 cede their authority over health decisions they make in maintaining the medical standards
9 under 14 CFR Part 67 in compliance with their contractual obligations to the People.

10 Pilots, including the Plaintiff, do not have any authority to confer in AA the right to
11 dictate any medical procedures or treatments affecting the outcome of their FAA Medical
12 Certificate or that of other pilots. In other words, pilots do not have the authority to vest in
13 AA any authority to prescribe any treatments or medications to themselves or any other
14 pilot. Maintaining the standard is the responsibility of the pilot and AA and APA may not
15 interfere in such responsibility.

16 That brings into question the authority of APA, or any pilot represented by APA, to
17 confer any such right in AA. The simple fact 24S exists in the CBA confers authority in
18 AA, authority the pilots may not confer in other entities under the law.

19 The People, who hold the power, gave Congress authority, that subsequently created
20 the Act. The FAA is a creation of the Act, and the authority of the People, conferred in the
21 pilot by the FAA, may not be further conferred, by the pilot, in third parties. The law does
22 not give pilots that authority, because by doing so they are allowing a third party into the
23 contractual obligation with the People, and the statement they make on their medical
24 examination application is no longer truthful, or of their own volition. Therefore, the
25 language in 24S attaches to public policy, and as discussed, is a detriment to the interest
26 and safety of the public.

1 The clever language used in 24S lulls the pilot into believing the “protections” in the
2 title exist, and that APA would actually defend their medical, when in fact it does the
3 opposite. Breaking down 24S language, starting with; **“The Company may not require a pilot,
4 at any time, to undergo any medical procedure(s), other than those required by the FAA to
5 maintain a First Class Medical Certificate, unless required elsewhere in this Agreement.”** As
6 stated above, the FAA does not require any medical procedure or treatment for the issuance
7 of a medical certificate to pilots. The FAA is an agent of the People and as such may not
8 enter into a contractual agreement with a pilot in a manner as to certify and sign the medical
9 agreement as the agent of the People and assume the risk at the same time.

10 Therefore, this language in 24S will only serve as the cause for an “Interpretation
11 and Application” dispute, or a “minor” dispute, that must be resolved by the grievance
12 machinery of the RLA. For example, a case can be made for AA requiring a “medical
13 treatment” such as vaccination or the use of other drugs, by which a pilot may feel protected
14 by the “medical procedures” language. An interpretation and application⁹ dispute would
15 then lock the pilot in the RLA process and out of the court during which the pilot must
16 comply with AA demands or be subject to termination¹⁰. As discussed above, under final
17 and binding arbitration, the end of the road for disputes under the RLA is an arbitrator and
18 an arbitrator *“ordinarily cannot consider public interest and does not determine violation
19 of law or public policy.”*

20 Also as discussed above, a pilot has a duty and obligation to the People to protect
21 the medical standard, and the process under the RLA is a detriment to the protection of said
22 standard.

23 Next, **“This provision does not apply to pilot new-hire requirements.”** Here, the
24 parties entered the Plaintiff into an unlawful contract. Again, the plaintiff does not have the
25 authority to vest any such right or authority in AA and conferring such contractual authority

⁹ Medical procedure differs from medical treatment in medical practice.

¹⁰ AA, in compliance with public policy, must use pilots who hold a valid FAA issued medical certificate.

1 in AA respecting new-hire pilots is a violation of contract law. The plaintiff has repeatedly
2 warned the parties against entering into such agreements by communicating his position
3 very clearly via email and USPS, and also via text or SMS messaging. The following was
4 communicated on May 24, and again on August 1, 2023, to inform all APA Board of
5 Directors and all elected and appointed APA officers prior to including any language in the
6 CBA of his disagreement and unwillingness to enter into such contract. None of the APA
7 elected or appointed representatives responded to the Plaintiff's communication.

8
9
10
11 *To all elected / appointed APA members,*
12 *As APA is finalizing CBA language, I am directly communicating my concerns*
13 *relating to inserting language relating to the FAA medical certificate or the*
14 *negotiating of any authority vested in me in said certificate. I am also providing*
15 *the legal argument that I believe all concerned must understand.*

16 *I will disclose that I am in litigation with AA regarding this matter and*
17 *emphasize that AA does not have any legal or lawful authority to impose any*
18 *medical treatment on any pilot including masking. They have only been*
19 *successful because of pilot compliance, thanks to threats of termination,*
20 *incentives, and payments for missed flying while receiving the jobs.*

21 *Beginning with Article I, Section 10, Clause 1 of the constitution:*

22 *"No State shall enter into any Treaty, Alliance, or Confederation, grant Letters*
23 *of Marque and ...pass any Bill of Attainder, ex post facto law, or Law impairing*
24 *the Obligations of Contracts, or grant any Title of Nobility."*

25 *We have a right to contract that the state may not impair. APA is created by*
26 *statute, and as a creature of statute, may not supersede its creator. That is to*
27 *say, APA may not infringe on or impair the right to contract. In that respect, the*
28 *NLRB is clear when it states, "Your union has the duty to represent all*
29 *employees...duty applies virtually to "every action" that a union may take..."*

30 *Everyone addressed in this letter is taking "action" during negotiations and it*
31 *is imperative that you understand my concerns directly and not infringe on,*
32 *impair, or invade any of my rights. My concerns are shared by thousands of*
33 *pilots at AA and elsewhere.*

34 *The statutory authority given to unions is clear and limited to securing – rates*
35 *of pay, work rules and working conditions – which none is applicable to an FAA*
36 *medical certificate. A medical certificate and health decisions pilots make are*
37 *not negotiable. Another law that defines what a union does is 49 U.S. Code*
38 *§42112 paragraph (d), Duties of Air Carriers. The law, which is contained in*
39 *the federal aviation act of 1958, defines pilots and co-pilots as "providers" of*
40 *transportation. As providers of transportation, pilots are creditors to the airline*
41 *and the contractual agreement is spelled out in paragraph §42112 (b) (1).*

1 *The Federal Aviation Act of 1958, Public Right of Transit*
2 *Sec. 104. There is hereby recognized and declared to exist in behalf of any*
3 *citizen of the United States a public right of freedom of transit through the*
4 *navigable airspace of the United States.*

5 *The Act does not give us, but rather recognizes our right to transit the navigable*
6 *airspace. Our pilot and medical certificates are rights that we enjoy, (A court*
7 *has determined that I have identified that right) and contrary to the statement*
8 *made by APA lawyer Rupa Baskaran, AA's policies, and their demands for*
9 *medical treatments, including masking, infringe on our rights and violate the*
10 *law.*

11 *In our republic the power resides with "The People." The People vest their*
12 *power in Congress which creates law. Congress passed The Act in 1958 which*
13 *created the FAA which, subsequently, vested authority in us to operate aircraft*
14 *in public. The Act is public policy and authority granted to us ends with us. In*
15 *other words, we are the end users and we do not have authority to pass authority*
16 *vested in us by The People to any aircraft operator or airline. If we do, we are*
17 *in violation of the law. To illustrate the point; pilots who elected to declare a*
18 *religious exemption were asked by AA to apply for an accommodation. The*
19 *accommodation included mandatory masking. Since the pilot cannot pass*
20 *authority vested in him to others, and they did in this instance by giving AA*
21 *authority to infringe on their medical, a violation has occurred. (Remember that,*
22 *in accordance with federal law, we had mask exemption in the TSA SD 1544 for*
23 *aircraft and airport operators, but that did not stop AA and APA pushing the*
24 *mask) AA knew that, but since administrative action is taken against the holder*
25 *of the medical, AA also knew they were not in jeopardy.*

26 *To "Sign" a document, according to Blacks Law 6th edition is, "To affix one's*
27 *name to a writing or instrument ...in token of knowledge, approval acceptance,*
28 *or obligation."*

29 *As pilots we sign all kinds of documents that create obligations, the medical and*
30 *pilot certificate, the fit for duty statements, the release, and the application for*
31 *a medical certificate. Among other contracts, we are making a gratuitous*
32 *contract with The People. We go about our business flying airplanes and we*
33 *sign because we are told it is required. Make no mistake, we are signing*
34 *contracts and making obligations. AA may not sign these contracts and can*
35 *never be a party to them. AA cannot sign the application for a medical*
36 *certificate, nor can it exercise that authority.*

37 *As stated above, a medical certificate is a right and public policy. Prior to*
38 *signing the application for a medical, or creating an obligation, we make a*
39 *health statement. The statement must be true and correct to the best of our*
40 *knowledge. We are continually contracting with The People as we maintain the*
41 *standards under 14 CFR Part 67. We are also submitting a statement to the*
42 *agency under pains of 18 U.S. Code §1001 which carries a 250K dollars fine*
43 *and five years in jail or both for falsifying any statement made. It is called the*
44 *agency because the FAA is the agent of The People. That raises the question of*
45 *whether a pilot, under duress and threat of termination, who accepts a job that*
46 *has known and advertised side effects, such as myocarditis, pericarditis, and*

1 blood clotting and potential sudden death, is making a true and accurate
2 statement on the application or in the fit for duty statement, none of which AA
3 can be a party to and is under no administrative consequence but is in violation
4 of the law.

5 I have established that a medical certificate is a right, public policy, and a
6 contractual obligation that AA cannot be a party to, and neither can APA. I have,
7 in one of my meetings with AA, offered full authority over my medical if they
8 could provide the law and if they did, they would have to sign the fit for duty
9 statement. AA declined the offer and stated they would not take that away
10 from me, it is in a transcript. Offer made and offer rejected. They do not have it.
11 Pilots are so afraid of something AA and the other airlines do not have. Just
12 because it was not challenged, and I am doing that, does not make it law,
13 however, consent makes contract and contract is law unless it is obtained in
14 many of the unlawful methods. That is where it all is, contract law.

15 That brings me to the next point. Since most pilots consented and took the job,
16 AA effectively created a new medical standard, or a second-tier medical
17 standard. AA is in violation of 14 CFR §121.383, because the FAA did not
18 regulate masking or jabbing and did not amend Part 67.

19 Remember that the rules apply to all pilots and airline pilots are in a different
20 category than GA pilots because of our added contractual obligations. The FAA
21 does not and has never required any treatment. If the FAA did, it would have to
22 assume responsibility and contract on behalf of The People, and they cannot do
23 that. They will never do that and that is why the language in the Delta contract
24 is laughable, but I am certain that they were advised by high paid lawyers. What
25 the Delta CBA did is create a future "application and interpretation" problem
26 for the pilots.

27 Also, the law does not allow unions and employers to make agreements that
28 supersede or invade public policy, especially if an agreement is in contradiction
29 to the meaning of the law. There is case law supporting my statement. Any
30 language in the CBA respecting a pilot medical certificate risks invasion of
31 public policy and a violation. Any language that is similar to the Delta CBA is
32 an invasion of public policy, especially the language concerning new hires. The
33 medical certificate stands on its own and there is no legal argument that
34 contradicts that premise. In other words, we do not need language inserted that
35 allows for future interpretation and application of the language.

36 The law is the law and has been for a very long time. Just because pilots are in
37 fear does not mean we need to put anything in writing respecting our medical
38 certificate. Fear is what caused many to react and accept the shot and some
39 have died while others lost their medical, and now fear is driving APA right
40 where AA wants it to be.

41 Another important factor to consider. AA does not have a justifiable or
42 legitimate business objective to demand any medical treatment for pilots. (Not
43 that it matters by my argument above) The risks outweigh the benefit. On a
44 typical day a pilot who is jabbed and who risks experiencing the side effects
45 listed above, is subjecting up to 600 people to added risks. Risks known to AA
46 that AA has not even disclosed in their contract of carriage. Remember that only

1 *the pilots and passengers are assuming the real risk (for AA it is just \$ amounts)*
2 *These jobs have never been fully approved and remain experimental. Even if*
3 *they are fully approved, AA does not have the authority to dictate to pilots any*
4 *treatment. The agency that issues the medical does not require a treatment and*
5 *AA must use pilots certified by the agency, logic would then follow that AA*
6 *cannot require a treatment either.*

7 *There are those who argue that the FAA has approved the jobs. That argument*
8 *is faulty and not true. The FAA does not require any medical treatment, nor have*
9 *they mandated any of the jobs, however, the FAA announced that pilots “may”*
10 *take the job, but they must comply with 14 CFR §61.53. Again, the rule applies*
11 *to all pilots and not only airline pilots. The argument is simple, the FAA is not a*
12 *health maintenance organization, and it does not have the right to prevent pilots*
13 *from receiving a “lifesaving drug” (as it was billed) and yet not violate their*
14 *right under The Act. The solution, as it has been for a very long time, the pilot*
15 *must make that decision and comply with §61.53. The only difference is the FAA*
16 *waiving the wait period for the use of drugs and §61.53 gives full authority to*
17 *the pilot in making health decisions that, for airline pilots, are contractual. If a*
18 *pilot knows or has a reason to know of any of the side effects of the jobs, does*
19 *the pilot take the job anyway and operate aircraft? §61.53 is not a sick call tool*
20 *but rather a planning tool. In contrast 14 CFR 107.17, which is not related to*
21 *carrying passengers, addresses the matter-of-fact condition of the operator.*

22 *In the interest of disclosure, I am also suing APA and the suit is progressing in*
23 *the federal court system. In sum, APA does not need to include any language in*
24 *the CBA respecting pilot medical certificates and does not have the authority to*
25 *negotiate a public policy or a right of a pilot. If APA does, it will be, as it has*
26 *been since 2020, at the detriment of the pilots. I do not consent to any agreement*
27 *between APA and AA respecting my FAA medical certificate that may affect me*
28 *in the public and in the private. I am available to discuss this with anyone who*
29 *is concerned or interested in learning more.*

30 *Respectfully,*

31 *Captain B. Saliba*

32
33
34 There were several versions of the Tentative Agreement (TA). TA 1.0 dated July 10,
35 2023, that did not contain 24S. TA 1.1 dated July 19, 2023, that did not contain 24S either.
36 On July 27, 2023, APA reached an Agreement in Principle (AIP) after AA injected another
37 billion dollars in improvements and, although not in its final format, the “Medical
38 Protections and Qualifications” language was introduced. That was only 11 days prior to
39 the beginning of the vote. TA 2.0 dated August 1, 2023, included 24S, 7 days before the
40 vote began. 24S was included in General Section 24 of the CBA. Even though 24S had

1 language related to scheduling of pilots and medical, the choice of section 24 hid it from
2 the pilot population during the vote. Very little attention was dedicated or given to 24S
3 during the ‘Road shows.’ Even APA Vice President stated that the language was a copy
4 and paste from the recently reached Delta Airlines pilot CBA. In yet another sleight of
5 hand, AA and APA blindsided the pilots by inserting the language in an obscure section of
6 the agreement, not addressed in other pertinent sections, and gave the pilots very little time
7 to study and vote on the contract. APA and AA acted in bad faith. In other words, APA,
8 and AA crammed 24S quietly and the majority of pilots were not informed or afforded the
9 time to consider the ramifications and consequences of 24S.

10 Following the introduction of the language in TA 2.0, the Plaintiff served both APA
11 and AA attorneys on record the following Affidavit of Truth and Demand,¹¹ for which the
12 APA attorney, Joshua Shiffrin, responded in an email on August 16, 2023, in the following:

13 Captain Saliba:

14
15 APA is in receipt of your August 1, 2023 and August 14, 2024 affidavits. APA
16 does not intend to make any changes to the tentative agreement that is currently
17 the subject of a ratification vote—and nor could it at this time under its governing
18 rules and policies.

19
20 Sincerely,

21
22 Joshua Shiffrin

23
24 It is unclear how APA’s governing rules and policies preempt RLA law, contract law, or
25 the constitutional rights of the Plaintiff.

¹¹ The Affidavit of Truth date reflects the date of a correction of “Truth” in the title. The original with the error was dated August 1, 2023.



AFFIDAVIT OF TRUTH and DEMAND

I, Captain Bahig Saliba, state and declare my Constitutional Right to a trial by jury and place the elected, appointed members, and individual members of the Allied Pilots Association, (APA) a pilot union representing the pilots in the service of American Airlines, Inc., under the statutory authority of the Railway Labor Act, and American Airlines, Inc., (The Parties) on notice and demand and warn the Parties against transgressing, impeding, interfering, invading, superseding, or otherwise attaching to my protected right of an FAA issued Medical Certificate while placed in the service of providing transportation for American Airlines, any contractual terms in the current tentative agreement, and in any agreement arrived at between the Parties or between the Parties and any other entity.

This warning and demand, are effective immediately, and for any future terms of agreement negotiated between the Parties or between the Parties and any other entity, for the entire period of my presence on the American Airlines pilot seniority list.

VERIFICATION

I hereby declare, certify, and state, pursuant to those penalties of perjury under the laws of the United States of America, and by the provisions of 28 USC §1746 that all the above and foregoing representations are true and correct to the best of my knowledge, information, and witness.

Executed in Cavefree, Arizona, on this 14th day of August in the Year of Our Lord Two Thousand and Twenty-Three

Autogra



Notary as JURAT CERTIFICATE

Arizona State;

Maricopa County;

On this 14th day of August, 2023(date) before me,

Deborah Lynn Domenico, a Notary Public, personally appeared

Bohig N. Solubi Name of Affiant, who proved to me on the basis of

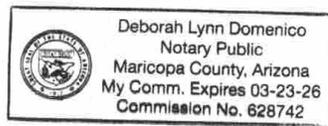
Satisfactory evidence to be the man whose name is subscribed to the within instrument and acknowledge to me that he executed the same in his authorized capacity, and that by his autograph(s) on this instrument the man executed, instrument.

I certify under PENALTY OF PERJURY under the lawful laws of Arizona State and that the forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary /Jurat

Deborah Lynn Domenico



1 The Plaintiff made a good faith effort to warn the parties against entering into an
2 unlawful CBA that directly implicates him but failed. AA lawyers of record did not respond
3 to the Plaintiff's Affidavit of Truth and Demand.

4 Now we move to 24S (2). AA and APA have crafted contractual language that
5 creates new qualifications for pilots who operate aircraft in contravention to the Supremacy
6 Clause, the Act, and Federal Aviation Regulation 14 CFR §121.383, all of which are public
7 policy intended to promote an aviation industry centered on safety and interest in the growth
8 of commerce.

9 **The Supremacy Clause** of the Constitution of the United States (Article VI, Clause
10 2) establishes that the Constitution, federal laws made pursuant to it, and treaties made under
11 its authority, constitute the "Supreme Law of the Land" and this takes priority over any
12 conflicting state laws.

13 Article I Section 8, Congress has the constitutional authority to regulate Commerce
14 with foreign Nations, and among the several States, and within the Indian Tribes. It then
15 follows that the Federal Aviation Act passed by Congress "*to create a Federal Aviation
16 Agency, to provide for the regulation and promotion of civil aviation in such a manner as
17 to best foster its development and safety, and to provide for the safe and efficient use of the
18 airspace by both civil and military aircraft, and for other purposes.*" Further "*Sec. 102. In
19 the performance of its powers and duties under this Act, the Board shall consider the
20 following, among other things, **as being in the public interest, and in accordance with the
21 public convenience and necessity:** (a) The encouragement and development of an air-
22 transportation system properly adapted to the present and future needs of the foreign and
23 domestic commerce of the United States.*" (Emphasis added)

24 The states do not have the authority under the Supremacy Clause to restrict pilots
25 from engaging in commerce throughout the United States, or to impose any conditions that
26 impact their medical certification under the Act. Therefore, 24S (2) creates a phantom

1 authority and gives AA a created right to identify destinations that restrict the rights of pilots
2 in the conduct of commerce across the United States. Through a less than transparent vote,
3 a waiver of rights to provide service throughout the United States in violation of public
4 policy, was forced on AA pilots and union members. Additionally, if the states could
5 impose such a policy, and they cannot, such a possibility is moot, the national emergency
6 has ended and a return to status quo is warranted at this time.

7 Nevertheless, 49 U.S. Code §42112, with its origin in the Act, states very clearly
8 that pilots and co-pilots “provide” transportation. The Act intended on creating a safe and
9 effective transportation system to promote growth and freedom of transit and pilots are a
10 very important integral part of the system. Pilots are therefore “creditors” rather than just
11 workers. Of importance is that the airlines must use FAA “qualified” pilots and co-pilots,
12 including pilots holding a valid FAA issued Medical Certificate, in the conduct of
13 transportation as required by their carrier certificate issued under 14 CFR Part 119. (Also
14 as required under 14 CFR §121.383). Again, restricting who of AA pilots can serve any
15 specific destination is in direct violation of the law and the intent of the Act.

16 For international operations, the law is clear. Under 14 CFR §121.11 – Rules
17 applicable to operations in foreign country; “Each certificate holder shall, while operating
18 an airplane withing a foreign country, comply with the air traffic rules of the country
19 concerned and the local airport rules, except where any rule of this part is more restrictive
20 and may be followed without violating the rules of that country.” (Emphasis added) Pilot
21 medical standards set by the FAA are more restrictive and must be followed by FAA
22 certificated pilots and any requirement by any foreign country may not violates those
23 standards. The rules apply to all the pilots in the service of AA and contractual creation of
24 a subgroup of pilots who meet certain medical criteria set by AA or a foreign country is an
25 invasion and violation of United States laws and public policy.

1 Following all of the above, 24S requires contractual disclosure of pilot medical
2 records. The ADA allows an employer to initiate asking medical and disability related
3 questions or mandate medical examinations¹², such as in Section 20 of the CBA, *only* if the
4 questions or exams are job-related and consistent with business necessity. *See* 2
5 *U.S.C. §12112(d)(4)(A)(1994); 29 C.F.R. §1630.14(c)*. Medical and disability related
6 questions and exams will likely be considered “job-related and consistent with business
7 necessity” when the employer “has reasonable belief, based on objective evidence, that; (1)
8 an employee’s disability to perform essential job functions will be impaired by a medical
9 condition; or (2) an employee will pose a direct threat due to a medical condition.¹³” In this
10 case, AA is contractually creating a necessity that is not supported in the law.

11 Additionally, any medical information collected by AA under §1630.14 (c)(1)
12 “...shall be collected and maintained on separate forms and in separate medical files and be
13 treated as a confidential medical record...” Using information such as vaccination status for
14 scheduling of pilot operations to certain destinations is in direct violation of the §1630.14
15 (c)(1) and is in no way confidential. AA will use such information to segregate and punish
16 pilots who refused to accept or comply with AA’s demands for medical treatments in the
17 maintenance of and compliance with their FAA medical standard and obligations to the
18 People.

19 In sum, 24S effects are profound and detrimental to public policy, and the rights of
20 Plaintiff pilot, and all similarly situated pilots. It aims at creating two subgroups of pilots,
21 in direct contravention to public policy; those who have undergone a medical treatment
22 demanded by AA under coercive threat of termination, and those who have not and who

¹² AA may require pilots to undergo examinations as required by law but there does not exist any code in aviation law that allows AA to dictate any medical treatment.

¹³ There is no evidence that pilots who have worked the entire time during the announced pandemic posed any direct threat due to any medical condition. Pilots sit side by side in flight decks for hours, unmasked and unvaccinated and there is no evidence they posed any direct threat to each other or other workers.

1 elected to maintain the public policy standards of their own volition. Such a requirement
2 does not exist under aviation law nor is required under the Act.

3 Furthermore, and no less important than any of the 24S trespass, in a 73/27 vote for
4 the CBA¹⁴, the constitutional right to a trial by jury in the defense of the pilot medical
5 certificate, and the decisions a pilot makes in fulfilling his public and contractual obligations
6 to the People, APA and AA unlawfully violated, and willfully and contractually waived,
7 such right of the Plaintiff, and all pilots who are similarly situated. The Plaintiff never
8 authorized AA or APA, and never agreed to waiving his right to a trial by jury, or any other
9 rights under any circumstances, as indicted above by his communications with both parties
10 to the agreement.

11 Section 24 G of the CBA

12 **Abrogation of Rights:**

13 **“It is understood and agreed that the rights of any pilot covered by this**
14 **Agreement¹⁵ shall not be abrogated in any way by the provisions of any other labor**
15 **agreement and no such pilot shall be permitted to accrue rights in abrogation of the**
16 **terms of this Agreement.”**

17
18 Section 24 paragraph G in this CBA contradicts and prohibits the inclusion of
19 paragraph 24S. It is a constitutional right of a pilot to contract with the people and provide
20 his labor in the form of transportation. It is the duty of an air carrier to maintain
21 compensation for pilots and copilots who provide transportation to the People. It is law and
22 public policy under 49 U.S Code §42112. An air carrier receives a privilege and must
23 comply with all the rules and regulations. Pilots and copilots who provide transportation

¹⁴ Many of the pilots voting for the CBA did not even know of the existence of 24S due to the insertion in the 11th hour after AA injected their one billion dollars in improvements and due to it being placed in an obscure section of the CBA.

¹⁵ These are rights of the pilot that are not created by this agreement. The above statement identifies the pilots as the pilots in the employment of AA.

1 under §42112, have a contractual obligation and a labor agreement with the People. Part of
2 this arrangement is that AA must use FAA *certificated and qualified* pilots and copilots.

3 AA may not create, through contractual agreements, new subgroups of pilots and
4 copilots who meet other than public policy standards, and may not prevent pilots and
5 copilots, who otherwise meet the standard set by the FAA, from providing such
6 transportation throughout the United States of America and between the United States and
7 foreign countries. Pilots who are party to this CBA, and for the same reason stated above,
8 may not contract with AA to do the same either. Section 24 G of the CBA prohibits AA
9 from entering into any agreement that abrogates the pilots' rights under §42112, and 24S in
10 particular, is in direct violation of the labor agreement existing under §42112 and abrogates
11 the rights of pilots and copilots who are providing transportation under the Act.

12 13 **In Conclusion**

14 Including 24S in the new CBA between AA and APA, in the eleventh hour of a four-
15 year negotiations process in an obscure section of the contract, and just as the narrow
16 window of voting on the new CBA began, points to bad faith dealings on the part of the
17 parties.

18 Including 24S in an obscure section of the CBA that is not related to medical
19 examination or scheduling, also points to the intent of the parties to hide a highly relevant
20 term where pilots could barely review or comprehend before the vote.

21 The fact remains that keeping 24S in the CBA contractually waives the pilot's
22 constitutional right to a trial by jury in the defense of his Medical Certificate and the FAA
23 medical standards he must continually meet, and the contractual obligations towards the
24 People that he carries, all under public policy.

25 24S confers rights and authorities in AA that APA, the Plaintiff, and other pilots,
26 cannot lawfully confer. Such rights and authorities conferred by the pilots who voted for

1 the contract, violate the rights of the remaining pilots who rejected the CBA, or others who
2 were unaware of the existence of 24S, and those who would become new-hire pilot
3 applicants at AA.

4 Furthermore, by obtaining medical information demanded from its pilots for the
5 purposes of using such information as a scheduling tool, is not only segregation of an
6 otherwise FAA qualified pilots within the ranks in violation of the intent of the Act, but also
7 a violation of the confidentiality laws of medical information.

8 Keeping 24S in the CBA has caused irreparable harm to the Plaintiff's constitutional
9 rights to contract and to trial by jury. Any future dispute of the kind the Plaintiff is currently
10 litigating in the courts, will be denied the court's jurisdiction in violation of his
11 constitutional rights. His right to execute lawful contract will continue to be violated with
12 the existence of the terms of 24S, especially respecting new hire pilots.

13 There is no monetary remedy that is adequate in law and a remedy in equity, by
14 striking or removing 24S from the CBA, will preserve the status quo respecting the pilot
15 FAA Medical Certificate that existed in the prior CBA (JCAB¹⁶). Striking 24S poses no
16 harm and is in no way a detriment to the parties of the CBA.

17 On the other hand, leaving such language strips the Plaintiff, and similarly situated
18 pilots, of their constitutional right to contract and to a trial by jury and locks them in an
19 administrative process ending in binding arbitration, a process that will not answer
20 questions of law required to protect the rights of pilots under the Act and public policy.

21 The Court must also consider the lack of good faith effort by the parties. Inserting
22 24S, which addresses medical and scheduling questions, in an obscure section, in the
23 eleventh hour of four years of negotiations, and after the pilot group had already been
24 exposed to the pay raises, and other important contract terms they were expecting, totaling
25 over 40 % over the life of the contract in the first and second versions of the Tentative

¹⁶ Prior CBA is referred to as the JCBA which combined the pilot groups of US Airways and American Airlines as a result of the merger between the two carriers.

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Enjoin the parties and install a Permanent Injunction preventing AA and APA from entering in any future similar contractual terms that attach to pilot medical certification standards and public policy.

Award Plaintiff court fees or attorney fees if retained or any other monetary awards as the Court sees fit.

On this Day of:

Bahig Saliba

[Redacted signature block]

Email: medoveloook@protonmail.com