UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Bahig Saliba
Appellant(s),

vs.

American Airlines, Inc.,
Chip Long, Timothy Raynor and
Alison Devereux-Naumann
Appellee(s).

9th Cir. Case No. 23-15249

District Court or
BAP Case No. CV-22-738-PHX-SPL

APPELLANT'S INFORMAL REPLY BRIEF

(attach additional sheets as necessary, up to a total of 25 pages including this form)

For the optional reply brief in response to appellee's answering brief(s) only.

List each issue or argument raised in the answering brief to which you are replying. Do not repeat arguments from your opening brief or raise new arguments except in response to arguments made in the answering brief(s).

Issue/Argument Number 1

What is the first argument in the answering brief to which you are replying?

Dismissal of the Breach of Contract Claim.

What is your reply to that argument?

It is beyond the shadow of doubt that, any ruling giving any airline any authority to continue to dictate medical procedures to pilots, is a violation of Title I, Section 10, Clause 1 of the United States of America, a violation of existing contracts, including my contract with the agency, the FAA. Any mandatory medical procedure that creates deficiencies or has the potential of creating any deficiency, or mandatory medical procedure that subjects pilots to side-effects such as blood clotting or

myocardial infraction, no matter how infrequent or minor, even when the consent of the pilot[1] is secured, will unravel decades of aviation safety, subjecting passengers, and crew to unsafe conditions. The autonomy of a pilot's health decision making, the central focus of this case, no matter how inconvenient it may seem, is fundamental to the integrity of the FAA medical self-reporting system that must be protected as Congress intended.

Even if explicit language prohibiting airlines from demanding such procedures is not written, it was never expected or the intent of Congress to allow such practice, or to allow air carriers to be party to contracts[2] between pilots and the agency, and there is no evidence to the contrary. It is the duty of the courts to uphold contracts, regulations, laws, and exemptions that are intended to achieve the highest safety standards in aviation. AA cannot, in direct violation of the agreed to contractual terms in the employment agreement, or the JCBA, dictate such medical procedures to its pilots.

Starting with the very profound and direct instructions given to me in an email by defendant Long. 2 SER 180.
"…I think it's important to not lose sight of our responsibility to control and comply with what's in our control and not be distracted with what's outside our control."

For following the instructions of Long in compliance with the contractual language in the manual and fulfilling my fiduciary duty and obligation to the public, I have been punished by AA in an unprecedented fashion. This Court must overturn the district court ruling.

If we agree for a moment, as AA contends, that the JCBA is the only contract that governs, we must then search the JCBA for any work rule requiring pilots to wear masks or accept any vaccination[3]. LOA 21-002 clearly states that vaccination is the pilot's decision to make; however, defendant Long and AA demanded "vaccination or termination" in a message to pilots, 3 SER 417, in violation of LOA 21-002. An accommodation, as an alternative, that requires masking is also in violation of the contract. I have, in 3 SFR 222-225, explained that my contract with The People does

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[1] *Pilots consenting to such procedures when demanded by their employer constitute a breach of their contract with the People.*
[2] *Airlines can never be party to the contract constructed between the pilot and the agency. There is a contract between the pilot and the FAA and there are 720K plus pilots who have that obligation that AA can never be a party to.*
[3] *It is unlawful to make such agreements, therefore such agreements do not exist.*

not allow me to share any authority vested in me by the FAA, therefore, I cannot allow AA as a party to my contract with the FAA and I would be violating such obligation if I do so.

Disputes that arise out of the interpretation or application of ***existing*** contractual rights are subject to the minor dispute resolution under the RLA. Masking of pilots is not a contractual right, *nor can it legally or lawfully be*[4], and vaccination is strictly voluntary under LOA 21-002. *45 U.S.C. §151a* states "[a] purpose of the [RLA is] …to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." Demanding masking and mandatory vaccination, under threat of termination, as AA's "***own***" requirements, are not terms in, and violates the JCBA and LOA 21-002.

Courts have authority to preempt the RLA and simply "look to" the JCBA, and as in this case, a term that ***does not exist*** in the JCBA, such as masking or mandatory vaccination, can never be seen, or be subject to interpretation and application or the dispute resolution process. The JCBA does not afford, since there are no terms giving AA any authority in dictating any medical procedures, the dispute resolution process under the RLA.

By AA's own contention, that the JCBA is the only contract, and it is not, AA is in violation of, and, as the Court can clearly see, the JCBA is not subject to interpretation and application. This Court must deny the RLA preemption argument and not affirm the dismissal on those grounds.

In addition, for the above reasons, an earlier decision by the District Court for RLA preemption, should also be reversed, and remanded to the Court for further action. 3 SER 455.

Another flawed argument is that Section 20 of the JCBA is controlling, thus would need to be interpreted – RLA preemption. Not true. Section 20 is of an investigative nature and does not control health decisions I make that ultimately determine my fitness for duty. Section 20 roots begin in Section 10 of the JCBA. (Both sections are intended to address sick leave, sick abuse, or observed deficiency) There is absolutely nothing in those sections that allows AA to control any of my health

[4] *See Saliba v. APA, 9th Cir. Case No. 23-15631 informal opening brief for further argument about the non-existence and the illegality of such agreement. An airline cannot create policies that invade or supersede Public Policy.*

decisions or prescribe any medical treatment, which is exactly what AA is doing and what this suit is about. Section 10 and 20 of the JCBA become applicable if there is any observed deficiency or abuse of sick. Again, a "look to" both Sections will suffice. The Court can easily determine that neither Section is applicable to the disagreement, thus not requiring any interpretation or application. The JCBA simply cannot invade Public Policy.

It is preposterous for AA to create a deficiency, and when rejected, as in this case, invoke Section 20 of the JCBA. In a vain attempt, AA desperately tries to circle back to the RLA and not answer to the Court. Again, health decisions a pilot makes are inextricably tied to a fitness for duty determination and declaration made by the pilot that are only under the control of the pilot.

There exists an employment contract with AA that is valid indefinitely. The basic terms of the contract are also imposed by law as spelled out in 49 U.S. Code §42112 (b)(1), Duties of Air Carriers. The language in the America West documents simply affirms that fact and assign the ***responsibility to maintain*** an FAA medical to the pilot[5]. The JCBA improves on the employment contract as stated under §42112 (d) Collective Bargaining, and addresses rates of pay, work rules, and working conditions.

There is no language in Title IV of the Act or §42112 that indicates a collective bargaining agreement is a replacement to the contractual terms imposed under the Act or any employment agreement. It simply states: "This section does not prevent pilots and copilots of an air carrier from obtaining by collective bargaining higher rates of compensation or more favorable working conditions or relation." The bones of the contract between pilots and copilots and the carriers exist independent of a collective bargaining[6] agreement. It follows that the JCBA is not the only contract. This is not a phantom contract as AA would like this Court to believe.

The JCBA does not address all the terms of employment and certainly not certain terms applicable to Public Policy under contractual terms between the FAA and the pilot, and more specifically, pilot health decisions directly affecting a pilot medical certificate and his fitness for flight[7]. Pilot health decisions are inextricably

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[5] *That remains the case today under AA.*

[6] *Collective bargaining: Negotiations between organized workers and their employers to determine wages, hours, and working conditions.*

[7] *There are more than 720K pilots who hold FAA medical certificates.*

intertwined with the fitness for duty of a pilot and are a *contractual* term in the employment contract. If a pilot does not meet said term, the entire contract and the JCBA are void. AA wants to control health decision making, which has proven disastrous for some.

AA argues that nothing prevents them from imposing masking and vaccinations. Not true. For starters, the JCBA prevents them from doing so. The manual gives me the *responsibility*, a contractual term, to maintain my health. Additionally, AA may not create policies that invade or supersede Public Policy or make agreements with APA that do. AA cannot impose conditions that create a deficiency and at the same time demand performance.

This case is centered on the question of who has the authority to make health decisions that affect a pilot's medical certificate, a contractual term in the employment contract, and whether there exists any law or contract that allows AA to impose any policy affecting a pilot's health – there is none. More importantly, there is a contract that prevents AA from dictating health decisions to pilots. There are agreements and law[8] that disallow AA such authority. *In Delta Airlines, Inc. v. United States, 490 F. Supp. 907(1980) 918, Civ. A. No. C78-445A. Any regulation involving physical standards will cause a certain number of people to be deprived of their privilege of flying but abolition of the criteria would cause risk to the public far in excess of any benefit to the individual."* Day v. National Transportation Safety Board, 414 F.2d 950, 953 n.2 (5th Cir. 1969) Should AA be allowed to abolish or alter the medical standards as they see fit, it will be an unacceptable risk to the pilot population and the public at large.

AA argues that, simply because language that explicitly prohibits AA from imposing masking, vaccination, or medical procedures for pilots does not exist, there can exist a separation between health decisions pilots make and their fitness for duty, and somehow, the lack of such language gives them authority to impose such demands by way of policies including under threat of termination.

AA further argues that nothing in the documents prevents them from complying with federal mandates. But President Biden's EOs 14042 and 13998 preserved heads of agency authority and demanded compliance with all applicable law. With his authority preserved, the then FAA administrator, Captain Steven Dickson, did not regulate masking or require pilots to get vaccinated. As a regulatory matter, a mask

[8] *Contract is law.*

exemption was issued to pilots. Contract is law, and a medical certificate and certain terms in the manual are contractual.

The FAA, the agency with authority over pilot certification did not regulate masking or require pilots to wear a mask, (For the very reason that a mask creates a deficiency) and the TSA issued exemption F3 for pilots, both in airport terminals and on-board aircraft. *Also, from Civ. A. No. C78-445A. Courts have repeatedly recognized that the Congressional objective of safety permeates the Act and that the fostering of safe air travel was the primary motive in enacting 49 U.S.C. § 1421. See Starr v. FAA, 589 F.2d 307 (7th Cir. 1978), Rauch v. United Instruments, 548 F.2d 452 (3d Cir. 1976), Gabel v. Hughes Air Corp., 350 F.Supp. 612 (C.D.Cal.1972)*

In *Leikvold v. Valley View Community Hospital, 141 Ariz. 544 (1984)* in an In Banc decision, the Arizona Supreme Court held that "…an employer's representation in a personnel manual can become terms of the employment contract…" and "...Evidence relevant to this factual decision includes the language[9] used in the personnel manual as well as the employer's course of conduct and oral representations regarding it…" and "…However, if an employer does choose to issue a policy statement, in a manual or otherwise, and, by its language or by the employer's actions, encourages reliance thereon, the employer cannot be free to only selectively abide by it. Having announced a policy, the employer may not treat it as illusory…" On balance the Court cited 12 cases versus 6 in favor of their ruling.

Also, in *Leikvold*, the Court held that "…Summary judgment is inappropriate where a genuine dispute exists as to material facts. *Washington National Trust Co. v. W.M. Dary Co.,* 116 Ariz. 171, 568 P.2d 1069 (1977). Because a material question — whether the policies manual was incorporated into and became part of the terms of the employment contract — remains in dispute, summary judgment is improper here..." and "...if the jury determines that the policies manual did form part of the terms of the employment contract, the next issue is to ascertain precisely what the terms of that employment contract were. Where the terms of an agreement are clear and unambiguous, the construction of the contract is a question of law for the court." *Smith v. Melson, Inc.,* 135 Ariz. 119, 659 P.2d 1264 (1983) and "…Only after the contract is so construed can the jury then determine whether it was breached…"

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[9] *The District Court disregarded the fact that a pilot is the responsible party, not the airline.*

There is an abundance of evidence it is only the pilot who makes health decisions, and the FAA is the agency in charge of setting the standards and the examination of pilots without imposing or requiring any medical treatment. AA's manual policy remained unchanged for at least the last 25 years. It is still the same today. Therefore, it goes to AA's conduct that, the term in the manual is contractual, and an extension of the employment contract – the pilot is *responsible to maintain his medical.* In simple terms, AA is in violation of contractual terms of agreements and is creating deficiencies that I have rejected.

In aviation, we do not do things just because there is no language that says we can't. We do that, and people will die. AA's defense team continually asserts that position and that is not good for aviation safety. There is a fiduciary duty that benefits the public that pilots and airlines must uphold to achieve the highest levels of safety.

AA also wrongly assumes I am turning a federal regulation into a contract with AA. Quite the opposite. AA is injecting itself in my contractual obligations with The People. I neither want AA to be part of, nor there is any lawful way for AA to be a party to such a contractual agreement.

It is AA who wants to enter into the obligation I have with The People, and not the other way around as AA alleges. I am not turning a federal rule into a contract with AA. The contractual term in the manual states it is the pilot's responsibility to maintain his medical, and now AA is in violation of the contractual term of "no interference." AA can never sign my application for an FAA medical examination declaring my health status, thus, AA can never be a partner or impose any medical procedures. AA can never sign my medical certificate, my contract with The People. There are only two signature blocks on the certificate, one for the AME and the other is mine. 3 SER 445.

AA's takes the position that nothing prevents them from imposing their "***<u>own"</u>*** masking and vaccination requirements, but AA has admitted it is my responsibility to maintain my medical certification.

As explained in my brief, any willful violation of the medical standard would subject me to administrative action, and in such a case, AA would be in the clear. Simply put, I want AA out of my obligations to the public. I had made it clear to AA in the hearing conducted on January 6, 2022, that my fiduciary duty is towards my passengers not AA. 4 SER 492–504 pg. 29 ln. 14. The term AA is violating is the contractual term and the promise the airline made – it is my responsibility to maintain my medical standards without AA's interference or imposition.

AA is also conflating two distinct authorities applicable in two distinct periods in time. The first, the time leading up to the statement of fitness for duty made by the pilot and decisions made to maintain his health standard, which are inextricably tied and unincumbered by any contractual term, and the second is after. Time that is up to the point of declaration of fitness by the pilot, belongs to the pilot. It is the pilot's decision up to that last minute and no one may interfere in the declaration. (Impose any medical treatment or deficiencies) After the declaration is made, a pilot may be subject to *examination* and any citizen, including AA, may bring any concerns of the fitness of a pilot[10]. After the declaration is made, an unfit pilot will have either violated the law, had a lapse in judgment or fell ill, and he may be subject to *examination* and/or administrative action.

Still, nothing and no one in the process may dictate to the pilot any medical treatment. Even if after an examination and any deficiency is ruled out, the declaration of fitness still belongs to the pilot. 14 CFR §61.53 is the regulation that gives the pilot the final and unilateral authority in making that determination/declaration.

AA cannot compel a pilot to perform even if he is found without any deficiencies. In other words, a pilot has that final authority no matter what, and it is my determination that AA's policies create unacceptable deficiencies. There is nothing in the language of §61.53 that compels a pilot to prove or provide any evidence of his determination of any deficiency or how he arrived at that determination, and AA has accepted my determination for the entire duration of my employment, except when it became politically disadvantageous for them, precisely why a contractual agreement in the manual giving me the sole authority in the maintenance of my medical certification is in the interest of public safety.

Harley, the clerk in the Phoenix Courthouse said to me after a brief discussion about my case: "I hope the next time I fly; you are the captain." I take Harley's words and his trust in me and the system very seriously.

It is a dead end that AA is trying to find a way through. There is an honor system that has served the aviation industry very well for many decades and AA's actions violate the intent of Congress and the terms of our agreement including my contract with The People.

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[10] *Section 10 and 20 of the JCBA serve that purpose.*

AA is left with their central argument that I can, somehow, be responsible for maintaining my medical clearance while also being *subjected* to AA's policies. That is a phantom relationship that is not workable or lawful. The FAA dictates to the airlines rest requirements, duty limits, and rest areas provisions on aircraft, but you will never see the FAA giving airlines any authority in dictating medical treatments to pilots or requiring anything that creates a deficiency, quite the opposite. AA has not been given any authority to dictate medical procedures to pilots including masking.

The defendants do not elaborate on how I can comply when subjected to such policies without, as they claim, AA assuming my responsibility. AA is essentially proposing a partnership in the maintenance of my health. Such partnership is not practical, a workable solution, or lawful and is fraught with danger, to my passengers, crew, and the public, and a departure from historical rigorous safety standards. It is in direct conflict of interest with safety.

Let us examine what AA is proposing. Masking, restricting my breathing while on duty (Even when given exemption F3 for pilots) There are the side effects of the vaccination. According to the product literature and other sources, these are some of the possible side effects: Acute Allergic Reaction requiring hospitalization, Myocarditis and Pericarditis[11], Syncope, Altered Immunocompetence, Blood Clotting[12], Vaccine not evaluated for Carcinogenesis, Mutagenesis, or Impairment of Fertility, Guion Beret, Death, Shingles, Altered Mental Status, and the list gets longer when reviewing the VARES reports. 3 SER 321-337 My own AME who has issued 3 medical certificates and two letters addressed to AA attesting to my fitness for duty, agrees that wearing a mask invalidates my medical certificate[13]. The CDC just recently initiated a study of Myocarditis and Pericarditis as vaccine side effects and already removed the J&J from the US market. Are we not putting the cart before the horse here? Is AA not compromising safety? I believe that AA has done exactly that.

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[11] *Not detectable until the occurrence of an event, most notably under stressful conditions.*

[12] *The FAA had placed the J&J on hold beginning 4-19-2021 for blood clotting but AA continued to accept it as compliance with their demand. Long refused to clarify how AA can demand that while the FAA had it on hold. The FDA has declared that the J&J product is no longer available in the US.*

[13] *Anytime on duty I must have a valid medical certificate.*

When asked if he will answer my question related to the FAA placing the J&J vaccine on hold on 4-19-2021, Long, after several attempts, refused to answer. 4 SER 727. In addition to being unlawful, how can anyone even consider becoming a partner with AA in health-related matters or even consider their demand when they refuse to be transparent?

How exactly does AA share the responsibility? Should I consent, because I must first consent, does AA compensate me for the rest of my life for an injury and the loss of my medical certification or my death? Are they answerable to any accident or incident, causing loss of life as a result of a dislodged blood clot inducing a cardiac arrest or embolism during flight, whether on the job or while flying privately over densely populated areas? Where does it stop? What will their demand be next? It is a slippery slope, and this is the reason we have a Public Policy which brings us here. Additionally, AA for years, and as recently as in their reply brief agreed to the fact that the pilot has the responsibility to maintain his medical. I am expecting nothing less than it is contractually my obligation and responsibility to maintain my health standards as prescribed by the agency.

Safety is paramount and AA must not compromise safety for a political agenda, and it is a political agenda. 4 SER 492-504 Defendant Raynor P19- "…we are asking million travelers a day…we are trying to get them back on the plane. The only way we know they will get on the planes is if we require everyone to wear a mask…if you can't set the example and be the one that wears the mask, how can you expect your team members to follow through…" This is the defendant who, when asked replied, in the same document on P12- "…would you take anything that jeopardizes your medical or do anything that jeopardizes your medical so on your next physical you—
Absolutely, no, absolutely not…" That is how AA dictated medical procedures to me and thousands of pilots, by coercion and under threat of termination.

Do I know and have a reason to know of all these possible medical conditions? Should I consent to AA's demands? and more importantly, should AA be demanding these medical procedures or create a policy that requires them? As defendant Long stated: "…To be clear, if you fail to comply with the requirements, the result will be termination from the company…" I don't believe I should violate public safety to remain employed at AA.

It is worth repeating that, nothing in any signed agreement gives AA the right or authority to impose any medical treatment. To be clear, LOA 21-002 greatly incentivized pilots to consent and get vaccinated and AA and the Defendants,

without any doubt, and in violation of contracts, coerced them into compliance under threat of termination.

The Defendants argue that nothing in the manuals prevents AA from imposing medical treatments on pilots, therefore, they feel justified in imposing masking and vaccination. Not so fast. Aside from the fact that, as stated above, new work rules must be negotiated and none have been, any ruling giving AA the right, would then give AA a cart blanche to demand any medical procedure they wish. The term stating it is the pilot's responsibility to maintain his medical clearance is a naturally well-established and accepted policy by the FAA, the agency overseeing AA's operations, and is the operative term in the agreement. I have given AA ample opportunity to provide authority they claim to have over my FAA medical certificate and to date they have not, and neither have they to the Court.

To be able to amend any agreement allowing masking or vaccination or to include policies in the manual that dictate such practice, AA must first have authority over my medical. In 4 SER 501 and 502 I offered AA control over my medical and AA refused and could not provide any authority from the FAA respectively. On page 41 of the document beginning line 15 defendant Raynor states: "…American won't provide you with any kind of documentation, other than what the company policy is, that says that American Airlines' policy trumps and overrides FAA policy. That won't happen…" The FAA itself cannot give AA authorization to impose medical treatments on pilots including masking and there is no record of the FAA giving AA any such authority.

AA does not have authority to impose any medical procedures in contravention to FAA rules and regulations. One rule the FAA follows strictly is that it does not require any treatment of any pilot. It is therefore implausible that it would authorize an air carrier to do so and thus interfere in the contract with the pilot. Again, imposing any medical treatment is a violation of the employment contract.

AA alleges it held me to the same standards as it holds every other AA pilot. Not true. AA must only hold pilots to the standards prescribed in 14 CFR Part 67, but in making such statement, AA was holding all the pilots to the deficiencies AA created. Even then AA did not hold me to the same standards as other pilots. It is a fact they did not on January 6, 2021. See 4 SER 492-504 P39- "…you can step outside that door, Captain Raynor, and have five events right now. But no, you choose me…" The hearing conducted on January 6, 2021, tells a good story. Here are some excerpts. Raynor quotes from the Section 21 hearing. 4 SER 492-504

P6- "We have a policy here. I didn't make it up. Our CEO didn't make it up. Ken and I have nothing to do with the federal mandate…"
P15- "…they are asking you to wear the mask as a leader for this company…"
P25- "…I am going to tell there are no documents. There are none…"
P29- "…And your passengers asked you to wear the mask, too."
P35- I offered to do anything if they can show authority over my medical and they refused.
P40- "…as long as it does not jeopardize my medical, I will comply."
P43- "…all I needed to hear is you are going to follow company policy…"

In addition to my brief and for all the above reasons, this Court must overturn the District Court decision and remand.

Issue/Argument Number 2

What is the second argument in the answering brief to which you are replying?

Aviation Law violation claim

What is your reply to that argument?

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

The Act does not create a right of transit, it protects an existing right and promotes Public Policy centered on aviation safety. As I have indicated in the past, I also fly privately and have a contractual obligation to protect the public. After I disallowed AA's dictation of health decisions, AA could have very well terminated the relationship. Instead, figuratively speaking, AA put the gun to my head, and thousands other pilots, to force a violation of §61.53[14] and the intent of the Act and began a retaliation campaign.

[14] *As a result, and according to his widow, Captain Wilburn Wolfe lost his life immediately after receiving the J&J vaccination under threat of termination and left his widow and two daughters behind. Even though the FAA placed the J&J product on hold on 4-19-2021, neither AA, Long, nor Raynor, the Chicago chief pilot where Wolfe was based, issued any warning to not receive the J&J vaccination. I believe this would constitute negligent homicide.*

AA cannot possibly violate or be subject to administrative action for a violation under §61.53, only pilots can, therefore naturally, as the Act was intended to function, there would not exist administrative action against AA[15]. However, by AA's mandating of medical treatments, it altered the standards under Part 67, subverted, and defeated the intent of the Act. Negligence and Coercion under threat by AA and the Defendants – get vaccinated or get fired – is a clear and present danger to aviation safety. AA also violated my authority as an administrator by definition, 14 CFR §91.3, and interfered with my duties under 14 CFR §91.11[16]. AA's defense – no private right of action. AA has never claimed it did not violate any of the stated statutes.

Safety is the primary objective of the Act, a Public Policy. Unlike AA's assertion, my claims are very much grounded in the Act itself. AA intentionally and willfully created *their own* policies in contravention to the Act[17].

There may not be explicit language in the Act to "protect" pilots from masking and vaccination, as AA contends, but there is no language that allows AA to dictate any medical procedure either. AA has not pointed to or identified any law, regulation, rule, or Congressional intent that allows them to dictate any medical treatment to pilots, so they resort to, if it does not say it, we will do it. AA must operate by strict adherence to the Act or else lives will be lost, the very reason the Act was created.

As a matter of construct, the Act prevents AA from being part of any medical examination conducted by the FAA for the purpose of certification and the continuity thereof, which inherently deprives them of the ability to prescribe any medication or medical treatment. It is a right exercised by the pilot only.

In Mexico City Aircrash, (406-407) this Court concluded "…We agree with the appellants that Congress intended to benefit equally both airline passengers and employees…The first part of the *Cort* test is therefore satisfied…" The Act addresses the financial benefit for pilots as well. As a pilot who exercises his right

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[15] *What is not at issue here is other parts in the law that delineate the carrier duties in limiting flying times and providing rest periods and such.*

[16] *In their interpretation of the law, the FAA declared §91.11 is the law for violations related to laser lights targeting flight crew in flight. Meaning a person does not need to be on board an aircraft to be found in violation of the rule.*

[17] *As discussed above, AA never had express authorization by any agency to make any of their policies mandatory, by contract, or otherwise.*

under the Act on the job and privately, I am yet in a subcategory that Congress paid very close attention to. The first *Cort* factor must be satisfied.

The Third and Fourth *Cort* factors are easily satisfied. Protecting the integrity of aviation safety, by protecting the authority of the pilot in making health decisions directly affecting his medical standards, and the process prescribed by the FAA for examination and issuance of medical clearances, is perfectly aligned with the intent of the Act. Being a federal statute that is not relegated to any state satisfies the Fourth factor.

The Second factor certainly lends itself to an implied private right of action. First and foremost, Congress recognized the importance of certain elements in aviation, one of which is the certification of airmen. I will first address other elements in the Act to provide clarity of the intent of the Act.

Title IV – Air Carrier Economic Regulation. Sec. 401. (a), an air carrier must have a certificate issued by the Board authorizing such air carrier to engage in such transportation. A certificate is supplemented with another document, the Operations Specifications, or commonly known as Ops. Specs. The document lists in details what the airline can do. If an operation is not listed in the Ops. Specs., the airline must receive authorization to conduct such operation. There is nothing in AA's Ops. Specs. that allows AA to impose any medical procedure on any pilot or create any deficiency by masking which violates 14 CFR §91.11, interference in crew duty[18].

Sec. 401 (e) specifies terminal and intermediate points of service[19] for AA. If service points are not listed, AA must receive authorization. Similarly, if vaccination or masking of pilots is not listed, AA must receive authorization and AA does not have any such authorization.

Sec. 401 (j) AA cannot even abandon an unprofitable route, for example, without prior approval. The Act is very specific in what an air carrier can do, and to be more accurate, the agency expects airlines to seek approval prior to commencing or changing any activity, down to a change in a checklist read by the flight crew for example. The agency is trusted with public safety first and efficient service second.

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[18] *AA's policies related to masking of flight attendants and passengers also interfered in my duty on board aircraft.*

[19] *There is a distinction between scheduled service and charter or non-scheduled service.*

Pilot certification is entirely safety centered. AA has breached and defeated the system in place, a system that secures pilot fitness for flight.

The Act requires the person to receive authorization prior to commencing any operation. Unless AA can produce the authorization given to them by the FAA to vaccinate pilots or mask them, AA is in violation of the Act.

Sec. 401 – Compliance with Labor Legislation (k) (1) – "Every air carrier shall maintain[20] rates of compensation, maximum hours, and other working conditions and relations of all its pilots and copilots who are engaged in interstate air transportation within the continental United States…" Under § (3) nothing prevents pilots from improving their pay by collective bargaining.

For refusing to violate any medical standard and rejecting AA's unsafe practices, AA retaliated, suspended my pay, and placed me on indefinite leave without access to any retirement funds or ability to obtain another income using my skills. AA is doing exactly the opposite of what the Act intended, demanding medical procedures when there is no authorization and denying me compensation when the Act requires AA to maintain compensation.

Title IX – Penalties – Civil Penalties, Safety and Postal Offenses, Sec. 901 (a) (1) and Criminal Penalties, General, Sec. 902 (a) both have penalties for any person who willfully violates any provisions of this Act including Title IV, or any order, rule, or regulation issued under any such provisions or any term, condition, or limitation of any certificate, etc. If the practice is not granted in a pilot or carrier certificate, it is a violation to assume such authority and in some cases it is criminal.

Now to the question of whether the Act intended to give the pilot a right of action for remedy. The Act does not explicitly deny remedy, and in this case, the Act leaves a void in administrative action. AA is the hidden hand in a violation in which only pilots may be subjected to administrative action.

Using AA's quote of Mexico City: "…Because of the Act's emphasis on administrative regulation and enforcement, we conclude that it is highly improbable that 'Congress absentmindedly forgot to mention an intended private action.'…"

Congress was very aware of, as I have indicated above, the criticality of pilots' health and there is nothing in the Act that authorizes air carriers to subject pilots to any

[20] *Maintain; Keep at the same level or rate.*

medical treatment, therefore it follows that, considering carriers must comply with the Act, they are subject to administrative action for violating their certificate and pilots for violating theirs. It is then logical that AA would not be subject to a violation of medical certificate standards[21]. Congress simply never anticipated airlines getting into the business of managing or interfering in pilots' health, therefore one would naturally conclude that Congress did not feel the need to address it.

The FAA built a delineating line between the pilot and air carriers. For one, a pilot certificate and medical clearance is a right under the Act and an intrusion into the certification of pilots invades his right and affects, not only the carrier operation, but the public at large. A medical procedure imposed by AA does not stay on AA's property, it goes everywhere a pilot goes, and in every plane he flies. Pilots and carriers share the airspace and any deviation from the standards set by the agency is a violation that is not in the interest of the public or the airline itself. AA crossed that line and violated the very Act designed to keep the airspace and public safe.

Congress intended for carriers to comply with their duties, one of which is pilot compensation, which is tied directly to the stability and safety of air carrier operations. It is a fact that for my rejection of AA's policies, which are in violation of the Act, AA has suspended my compensation since August 22, 2022. One would argue that Congress gave me the financial leverage to protect my medical standards and recover in such a case as this one.

To borrow once again from the Fifth Circuit in Laughlin v. Riddle: "In prescribing the rates of compensation to be paid to and received by pilots, Congress did not intend to create a mere illusory right, which would fail for lack of means to enforce it. The fact that the statute does not expressly provide a remedy is not fatal." and As long ago as Marbury v. Madison, 1 Cranch 137, 5 U.S. 137, 2 L.Ed. 60, it was said: "* * * it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit, or action at law, whenever that right is invaded." And in Peck v. Jenness, 7 How. 612, 48 U.S. 612, 12 L.Ed. 841, it was recognized that "A legal right without a remedy would be an anomaly in the law." In De Lima v. Bidwell, 182 U.S. 1, 21 S.Ct. 743, 745, 45 L.Ed. 1041, it was said: "If there be an admitted wrong, the courts will look far to supply an adequate remedy." It is not that I just want a remedy, even though I do, it is because there is a remedy in Court that must be applied.

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[21] *Just because the FAA indicates pilots may accept vaccination, is not an indication they will meet the medical standards. Pilots are always reminded to comply with 14 CFR §61.53.*

In summary, Congress never intended to allow interference with pilot health decisions by air carriers as evidenced by the separation of process in certification segregating pilots and airlines. AA cannot point to any rule, law, or legislation that gives AA any such authority. AA violated the Act by violating several rules interfering with my duties as a crewmember, and by imposing medical standards AA is not authorized to impose, and further, when rejected, AA sanctioned me and violated the carrier economic duties towards pilots and co-pilots. As a beneficiary of the Act, this Court must find an implied private right of action to collect what is owed to me under contract. This Court must overturn the District Court ruling of no private right of action dismissal and remand this case for adjudication.

Issue/Argument Number 3

What is the third argument in the answering brief to which you are replying?

1983 claim

What is your reply to that argument?

There exists the question of the legality of AA's policy that required pilots to wear a mask while on duty. That calls into question the assumption that AA was only conducting an *internal* disciplinary process that is not related in any way to the events at the Spokane airport or that AA's action did not become a public function. When there is a question or ambiguity about the validity of their disciplinary process, which is tied to contractual terms, it must be left to the jury to make that determination. *See Leikvold citation above.* The answer to the legality of the disciplinary process that AA conducted is tied directly to the first claim and is a determinant in whether AA was conducting an internal process or carrying favor with the Spokane police and acting under color of law. The Court must answer the first claim before this determination is made.

AA's mask policy was updated to reflect the mandate. 3 SER 304 It states: "Consistent with the federal mandate" and that is where AA departs from the mandate and makes it their "*own policy"* as they state in their brief. Accepting they are complying with the mandate; pilots are exempt from masking in airport terminals and on aircraft. The actions of AA do not reflect compliance or consistency with the

federal mandate[22]. Accepting it is their policy, AA is in violation of the terms of the contract. AA had an illegal policy for pilots and is complicit with the Spokane police in their persecution.

The Spokane police did not act of their own accord. Watson, the sergeant who immediately went to inform the AA gate agent Tony, was not even sure if a pilot had to wear a mask and was seeking clarification from the gate agent who is not an authority on the mask order. (It is on a recording I have in my possession) The facts are the actions of the police were simultaneously directed by AA at the time of the encounter. Ray Crownhart, the AA pilot who was commuting to Dallas informed me and the copilot that: "For what it's worth, the police let you go because Tony[23] wanted an on-time departure." Yes, AA demanded an on-time departure from the police and promised that the supervisors will be contacted. AA and the police were not acting independently, and their decisions relied on each other's actions. It is on the tape in my possession where Tony tells Watson that he will notify my supervisor. From the very first moment, the police and AA acted dependently and in concert. It was not a mere notification by the police. The police compelled AA to act in my discipline. Aside from the F3 exemption, the SDs directed the police to ask the person to wear a mask and if refused, escort the person out of the building. The police wanted AA to have an on-time departure. I was willing to leave the terminal at any time if forced to wear a mask.

There is no need for the parties to have planned or coordinated their actions to have a valid 1983 claim either. AA and the police implicitly and explicitly agreed in persecuting me for the event on December 6, 2021. Police familiarity with the AA gate agent, (It is a small station) fosters close cooperation between the parties. The police knew the agent on a first name basis, and such an understanding was a forgone conclusion.

What we have here is the very function of enforcement that is traditionally reserved for the state that AA agreed to carry out. The nature of what was enforced is immaterial in that it is the act of enforcement that this Court must consider. The question of the legality of what is enforced is a separate question. AA has admitted they had no jurisdiction over the TSA area, 4 SER 499 pg.27 ln.12, therefore AA was passed the torch to conduct an unlawful disciplinary action to carry favor with

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[22] *The F3 exemption provided in the TSA SDs is intended to assure safety in aviation and not introduce any deficiency to pilot health. By forcing masking, AA violated that directive.*

[23] *Tony is the AA gate agent on duty that morning.*

police who gave AA an on-time departure. The police did not follow the TSA SD F3 exemption and neither did AA.

Simply put, Tony, who is not an authority on pilot masking or the SD, promises to notify my supervisor in exchange for an on-time departure, the police let me go and on the next day, following a telephone conversation with AA, follow up with emails and compel AA to continue the investigation and provide them with all their assistance and AA reciprocates. This is not simple notification as the Court contended in its ruling.

AA highlights some purported inconsistency in my claims, when in fact, they are very consistent. The police let me go in favor of an AA on-time departure while securing punishment on the AA side, and, while the police could not force me to wear a mask and give AA an on-time departure per their request, they were assured by AA that the enforcement would carry out on their end. Very consistent.

Turning to AA/police contact. 4 SER 695-698 The email sent to John A. Kirby suggests a prior conversation with Tarina Rose-Watson. 4 SER 495 Watson stated: "Thank you for your time this afternoon." and proceeded to provide the information. I don't have a record of that telephone conversation and we can only guess what was discussed on the call at the moment. It is in the record that the police not only arrived at an agreement with Tony, the AA gate agent on duty on December 6, 2021, but went further, and on the following day in follow up emails to a conversation, the police provided AA detailed instructions on how to receive their report, in which the police racially profiled me as Middle Eastern. The sergeant further provided her schedule, any further assistance needed to investigate the "case" and compelled AA to "consider" the TSA report. *Compelling* AA to act and continue the police violation of my constitutional right to contract, and my right to transit the navigable airspace as a pilot, and AA reciprocated in kind.

The police acted on a request from the AA gate agent to allow an on-time departure, thus releasing me to proceed. The police did not act of their own accord, rather in concert with the needs of AA. Even if AA did not request an on-time departure, the fact the police gave AA an on-time departure is sufficient. The police and AA had a very close relationship that was evident in the police report in which they stated that, because of my actions, the flight departed one minute late according to the AA gate agent. The police expressed concerns and interest in a private business and facilitated an on-time departure. It is clear the police have a close nexus with AA that even departure times are a consideration. 4 SER 697.

Ken Wood, the first Phoenix chief pilot to interact with me, agreed with my interpretation of the law, 4 SER 700, but was quickly removed, and Raynor was sent from Chicago to conduct the hearing. AA was compelled to punish me as the police wished and removed (Ken Wood) any obstacle in their way.

During the hearing on January 6, 2022, beginning 4 SER 493, Raynor made clear AA was working with the Spokane police. Raynor confirmed on Pg.6 the police had contacted AA. This Court has held the "if it were not for" reasoning in their determination of 1983 claims. Therefore, if the police did not compel AA to act, we would not be here today.

Raynor further indicated they informed the police that: "American Airlines said we will take this … we will handle this…on the American Airlines side" and on Pg.28 "…They are partners with us. They work with us…" This is not a mere notification case but rather a police/AA partnership in violating my constitutional rights.

We have two actors who share the same goal, enforcing masking on pilots regardless of its legality. Two actors who benefited from federal funding and understood to lose millions if masking was not enforced[24]. Two actors who were given clear instructions in TSA Security Directives to exempt pilots from masking, in accordance with President Biden's Executive Order and federal law but elected to violate the exemption. Two actors who are closely familiar with each other and are on a first name basis. Two actors who communicated beyond mere notification and provide guidance to further persecute me. Two actors, who instantly at the time of the event, coordinated a benefit for the airline, an on-time departure, and a later enforcement action benefit for the police.

There exist more than enough credible allegations for this Court to reverse the District Court decision and remand.

Issue/Argument Number 4

What is the third argument in the answering brief to which you are replying?

Hostile Work Environment.

What is your reply to that argument?

[24] *Pilots had to be masked to show leadership as stated by Raynor.*

The fact remains that on April 14, 2022, I complained of discrimination to HR and AA managers and asked for action to be taken. In referencing the America West agreement, I was clear that my complaint was based on national origin discrimination. (There are enough exhibits and language to indicate I have claimed national origin discrimination. The District Court cannot dismiss all the evidence) As of today, AA has not even started any investigation into my allegations. Contractual or not, AA, has a duty to investigate. An HR investigation is not predicated on any terms in the JCBA. AA conditioned their investigation on my acceptance of certain terms in the JCBA. The two are not interdependent.

The fact that a complaint with the EEOC was filed and a right to sue letter was issued by the agency supports the fact that, after experiencing discrimination in the past, I had genuine concerns of discrimination that I expressed to management. The EEOC process took almost five months for which it was mostly in waiting for the interview. In the meantime, AA did not investigate any of my concerns. The District Court determined the administrative process exhausted but disregarded all the other evidence and ruled on statements I made in the complaint, statements that do not preclude discrimination based on national origin, especially since AA has not investigated any of my claims and still refuses to do so.

Only after I complained on April 14, 2022, that AA began a campaign of discipline that no other pilot has been subjected to. Even though I have made statements to the effect that AA used everything in their power to force me to accept an amendment to my working agreement, it does not mean there is no discrimination, especially since AA has been consistent in refusing to investigate. What is AA hiding? Why have they not ruled out any discrimination through an investigation?

If discrimination is not ruled out through investigation, “everything” in my statement, must necessarily include discrimination based on national origin.

What is relevant in the timeline is that April 19, 2022, after the mask mandate was defeated, I was ready and available for return to service. The dispute over the mask should have been over, but AA continued the punishment. I have made it clear in court documents that I legally used my accumulated sick time to avoid conflict. I had no illness. I had not worked with anyone between December 6, 2021, and April 22, 2022, which leaves AA with no legitimate reason to suspect any deficiency that they needed a fitness for duty, especially by a forensic psychologist right her in the City. Why not in Phoenix Arizona? And why take over 50 days to locate a forensic psychiatrist to conduct the examination. AA never provided any reason. This Court can again “look to” the JCBA to learn that the language is very clear, and that AA

did not comply with the agreement. Still AA has not provided any reason for their demand. AA is pulling all the stops, including covering managers who discriminated against me, to harm and discredit me on the job, with the FAA, with the public, and privately. It is very simple, AA can investigate and put the matter to rest but chooses not to.

I am the only pilot at AA who is in this position, why? I was the only pilot post September 11 to be removed from flight duty for investigation. Why does AA insist on not investigating to rule out any discrimination based on national origin? This Court must ask why? Must look at the story and then come to their conclusion.

AA cannot affirmatively deny there was no discrimination based on national origin if they do not investigate. This Court must reverse and remand on this claim.

IN CONCLUSION

AA has admitted it is the pilot's responsibility to maintain his FAA medical standards. Language in AA's manual supporting this fact has never been altered, it has been understood, complied with, and is the foundation of public safety. It is an employment contractual term. Even as I write today, a new tentative collective bargaining agreement has been reached between APA and AA that does not contain any language dictating any medical procedure or masking of pilots or any other language giving AA any authority in dictating any medical procedures.

There is nothing in the JCBA that gives AA any authority to dictate medical procedures to pilots, and AA has not presented any law that allows AA to do so. The pilot is the final authority in the declaration and determination of his fitness under 14 CFR §61.53. A "look to" the JCBA will quickly indicate there are no terms dictating any medical procedures to pilots and that AA's demand for a fitness for duty examination is without merit.

AA can never be party to, or a partner with any pilot in any health maintenance scheme in which AA dictates any medical procedures including masking in the conduct of business as a carrier under the Act. AA can never sign a pilot's medical certificate, the application for a medical examination in which a declaration of health is made by the pilot, or any fitness for duty declaration. Any attempt by AA to inject itself in the process is a violation of the terms of the employment contract and the law. Giving AA any authority to impose medical procedures amounts to authority given over the more than 720K pilots in the United States, which amounts to giving

AA authority reserved for the FAA in setting the medical standards. AA is taking authority away from the FAA in violation of the Act.

In violation of the terms of the employment contract, AA imposed masking and disciplined me for maintaining my FAA medical standards and rejecting their policy. Even though AA pilots were given an exemption in the TSA SD, it did not stop AA from imposing their "*own*" unlawful policy. Willful disregard of the intent of the pilot mask exemption is a violation of the mask order. AA violated LOA 21-002 and under threat of termination, "vaccinate or be terminated", coerced me into accepting vaccination and later offered accommodations that imposed masking, a violation in and of itself. AA is in violation of the employment contract and the District Court ruling must be overturned and remanded.

There is a defined line between air carriers and airmen in the certification arena prescribing administrative action for violations by the respective party. Congress never envisioned or authorized AA to cross that line and did not create a mechanism to deal with such a violation. Therefore, because I rejected AA's intrusion into my medical certification, AA retaliated and punished me by taking adverse action affecting my economic security, also prescribed by the Act.

The federal aviation act of 1985 prescribes financial benefits and economic security for pilots and copilots and makes it the carrier's duty to maintain pilot compensation. By violating the Act, AA is in violation of contractual terms set in the Act. This Court must find a private right of action to recover what I am entitled to under contract.

AA and the Spokane police acted in concert, simultaneously and dependently to enforce an unlawful act in violation of the TSA SD's pilot mask exemption. Together, they coerced me under penalty to violate medical standards set by the FAA in violation of safety standards, the prime objective of the federal aviation act of 1958. AA and the police benefited from federal financial incentives predicated on the enforcement of masking. AA and the police coordinated efforts and shared information in their persecution and interfered in my right to transit and right to contract with The People. This Court must find AA acted under color of law and the District Court decision must be reversed and remanded.

Not investigating an allegation of discrimination that I lodged on April 14, 2022, that can positively eliminate any question of discrimination, is a damning indictment that AA is discriminating against me based on my national origin as we speak. Through investigation, AA could have eliminated any claim of discrimination but

chose to disregard the law and not conduct any investigation. AA created a hostile work environment, and the District Court decision must be reversed.

Bahig Saliba

Date. July 12, 2023