**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

Bahig Saliba
Appellant,

vs.

Allied Pilots Association
Appellee

9th Cir. Case No. 23-15631

District Court
Case No. CV-22-1025-PHX-DLR

# APPELLANT'S INFORMAL OPENING BRIEF

**JURISDICTION.** This information helps the court determine if it can review your case.

1. Timeliness of Appeal:

   a. What is the date of the judgment or order that you want this court to review? 03-27-2023

   b. Did you file any motion, other than for fees and costs, after the judgment was entered? Answer yes or no: YES

   c. What date did you file your notice of appeal? 04-26-2023

**FACTS.** Include all facts that the court needs to know to decide your case.

2. What are the facts of your case?

I, the appellant, stand on my claim and proceed.

This case turns on whether the Allied Pilots Association (APA), the union representing the pilots in the employment of American Airline, Inc.

(AA), has statutory authority, or may by any method, lawfully enter into any agreement that infringes on a pilot's health decisions affecting his FAA pilot medical certification. Such agreements, whereby APA specifically accommodates AA's demands of any medical procedure that has known and advertised negative side effects, shall be deemed unlawful and in violation of the Duty of Fair Representation (DFR). Terms in agreements made between APA and AA, and positions adopted by APA, at times without reaching formal agreements or amending the Joint Collective Bargaining Agreement (JCBA), or letter of agreements reached, invade, and supersede Public Policy, unlawfully align AA and APA positions and disadvantage AA pilots interests rendering APA impotent and unable to represent them fairly. The terms of these agreements induced activities that create known and advertised medical deficiencies and side effects (as advertised by product manufacturers) that negatively impact a pilot's FAA medical certification, rendering the pilot unable to meet FAA medical standards.

As declared in the Federal Aviation Act of 1958 (The Act) Section 104, Right to Transit, the FAA pilot and pilot medical certification is a right, which raises to question whether APA holds any statutory authority to make any determination of whether any medical treatment, APA negotiates terms of compensation for, does not oppose, or supports, violates APA's statutory authority under the Railway Labor Act (RLA) and the right of a pilot under The Act, and whether APA colluded and/or conspired with AA to enforce such treatments. APA has violated the RLA, its statutory authority under the RLA and colluded with AA to enforce unlawful work rules upon the pilots of American Airlines including myself.

I will argue and establish that APA violated their statutory authority, failed to represent me, and conspired and colluded with AA to enforce unlawful practices that invade public policy and rights under The Act including my constitutionally protected right to contract. I will also present the argument, as I have in the District Court, that APA willfully cast aside protections afforded to it by the Supreme Court and the RLA and acted in "other than a pilot union capacity" exposing and subjecting it to punitive damages.

The Phoenix, Arizona District Court erred in its determination and presented no legal precedent, law, or case law supporting its determination that APA may adopt a position that is contrary to my position and that of the FAA and Public Policy, supersede Public Policy, and subsequently deny me fair representation under the dispute resolution process of the RLA. (APA

unlawfully agreed to engage in the process with AA and corralled pilots into participating including myself) The Court is incorrect in determining that APA lawfully developed and adopted their position, thus, seemingly, APA simply had a difference of opinion over the proper reading of the relevant FAA regulation respecting authority over health decisions a pilot makes, decisions that directly affect FAA medical certification. APA does not have that right or ability and therefore, their position is not grounded in law. I disagree with the Court's interpretation of the FAA regulation and that APA did not breach its DFR.

Additionally, APA had a duty under the RLA §152, Seventh, Tenth, and §156 to address any changes to the work rules resulting in an amendment to the JCBA. APA did not follow the rule, adopted an unlawful non-opposing position without any formal agreement, (APA and AA cannot lawfully make such an agreement because it supersedes Public Policy) and, for AA's violation under Seventh, APA did not pursue the violation through a United States attorney. Additionally, APA did not act when agreements, such as letter of agreements, (LOA 21-002) made with AA, were violated and terms of the agreements changed by AA. (From pilot choice to mandatory and then later the introduction of an exemption) Accordingly, APA failed their duty and colluded with AA to enforce unlawful masking and new work rules on the pilots.

This Court is presiding over case number 23-15249 which shares many of the facts that intertwine with this case.

In this case, APA cast in stone its unlawful position when their lawyer, Rupa Baskaran, stated the following (Doc.1 at 14:2) "…APA does not agree with your position that the Company's mask policy violates FAR 61.53, ***nor does it agree that the Company mask policy is in violation of your rights in any way.***" What APA did not consider is that a pilot FAA medical certification is a right and Public Policy under the jurisdiction of the FAA, and only the pilot can make health decisions affecting his medical, and interpretation and application of §61.53 is operational, and exclusively reserved for pilot interpretation and application. Neither APA nor American Airlines may interpret or apply the rule in any way contrary to that of a pilot. In other words, APA may not develop an opinion on the rule for it is authority given to the pilot by the FAA, the agent of The People.

Furthermore, masking of pilots was and is not a term in the JCBA, and as such, was not subject to the dispute resolution process, however APA

engaged AA and subjected pilots, including myself, to the disciplinary process that imposed sanctions against pilots who followed the law and did not restrict their breathing while on duty. APA violated and abused the JCBA, acted outside its statutory authority, and violated its DFR.

In rendering the decision to dismiss the case, the District Court missed the mark by stating that the differences of opinion in interpreting and applying the law is insufficient to support a breach of duty. (Doc.17 at 5:7) The Court went on to interpret the law, 14 CFR §61.53, which, according to the Court, I am idiosyncratic and "almost certainly incorrect" in interpreting, however, the Court did not offer any case law or court decisions that support their interpretation, and when I filed a motion for reconsideration, corrected the Court and provided more than enough information and new evidence supporting my DFR claim, the Court incorrectly deemed my motion a "quarrel" with the Court.

The motion was far from a quarrel, and the District Court is incorrect in their findings and decision to dismiss the case. Additionally, the rule and the law in §61.53, as I will argue once more, are tied directly to other rules and obligations that only a pilot may exercise, such as contracting with The People of the United States of America, The People I carry on aircraft under my command, which renders it impossible for the Court to interpret and apply §61.53 – only pilots may do so and the FAA did not impose any restrictions, medical procedures, or regulate masking for pilots – therefore the rule stands and is applicable. By incorrectly interpreting §61.53, the district Court blurred, if not obliterated, the line between the judicial and legislative.

Although this Court is familiar with arguments presented in case number 23-15249, I will present much of the argument here for the record.

## ESTABLISHING A PILOT'S RIGHT

The Federal Aviation Act of 1958, Public Right of Transit, Section 104 states: *"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, a Public Policy, declares my right to freely transit the navigable airspace. I choose to do so by operating aircraft as a pilot. The FAA, the agency created by The Act, is an agent of The People who hold the power. To maintain order, the FAA establishes rules and regulations under which I exercise my right. An FAA pilot medical certification is a right and Public Policy.

The FAA does not require or impose any medical treatment. (Neither should AA in agreement with APA) It sets the medical standards and authorizes select doctors called Aeromedical Examiners (AMEs) (There are roughly 2500 AMEs nationwide) to conduct medical examinations and issue medical clearances titled medical certificate. Only the FAA may set the standards for medical certification. AMEs conduct examinations for the issuance of medical certificates and the pilot has the exclusive authority and obligation to make health decisions in maintaining the standard.

The entire process of exercising the right to transit in commercial operations is contractual, and contractual agreements are made between the pilot and The People through their agent, the FAA. Naturally and lawfully, the FAA may not dictate to the pilot any medical procedure under the contract arrangement. The choice in health maintenance and of any medical procedure must always be that of the pilot, and neither the APA nor AA can dictate any medical procedure, including restrictions on breathing such as masking, or determine how a pilot meets the standards. Precisely why pilots, in compliance with the law, are exempt under President Biden's EO 13998[1].

## RIGHT TO CONTRACT

Article I, Section 10, Clause 1 of the Constitution. In addition to prohibiting states from enacting bills of attainder and ex post facto laws, the Constitution seeks to protect private rights from state interference by limiting the states' power to enact legislation that alters existing contract rights. The

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[1] *EO 13998 Sec. 6 (a) Nothing in this order shall be construed to impair or otherwise affect: (i) the authority granted by law to an executive department or agency, or the head thereof.*
*The FAA, the agency overseeing pilot operation did not regulate masking for pilots or require any medical procedures TSA issued exemption F3 in the Security Directives.*

Constitution's Contract Clause provides: "No State shall…pass any…Law impairing the Obligation of Contracts." If there is Interference from the state, it must generally be reasonably designed and appropriately tailored to achieve a legitimate public purpose. (Such as in this case where a contract between a pilot and The People is subject to FAA rules and regulations or that an agreement between a pilot union and AA may not invade Public Policy) In this case and in line with my duty, I am executing contracts with every signature I affix to a document under 18 U.S. Code §1001. I am free to execute such contracts in accordance with Public Policy and in accordance with the law following FAA rules and regulations. In addition, I may not be coerced or forced into contractual agreements in violation of the federal regulations and Public Policy. The above statements demand supporting language from this Court.

## THE ALLIED PILOTS ASSOCIATION

The APA petitioned and won a representation campaign to represent the pilots in the employment of American Airlines. APA is subject to the Railway Labor Act (RLA) and its statutory authority is limited to negotiating rates of pay, work rules, and working conditions.

A pilot FAA medical certification is neither a work rule nor a working condition. It is, as described above, a right that is subject to Public Policy, and such right is neither negotiable nor subject to the RLA. As a matter of law under 49 U.S. Code §42112 (b), air carriers must use qualified pilots and copilots, who must receive proper medical certification, (also under 14 CFR 121.383) and under §42112 (d), pilots and copilots may use collective bargaining to obtain higher rates of compensation or more favorable working conditions or relations. §42112 does not give APA the right to infringe on standards set by the FAA or Public Policy.

Nowhere in the law does a union have any authority to negotiate or make agreements respecting a pilot FAA medical certification or health decisions a pilot makes that directly affect the medical clearance. APA was and still is acting outside the law and, even at this time, is in the process of striking yet another agreement with American Airlines that invades or supersedes Public Policy. APA does not have the authority to even interpret or apply §61.53, let alone develop or formulate an opinion on the regulation. Once

again, the interpretation and application of §61.53 is operationally exclusive to the pilot.

The regulation, §61.53, does not target APA, AA, or, with all due respect, the Court. None of the above can act as pilot in command or in any other pilot capacity, can be party to any medical examination, can make determinations of medical deficiencies, or is subject to administrative action by the FAA. None of the above can make any health statements during medical examinations or of fitness for duty declarations. In simple words, APA, and AA without any authority, are sticking their nose where it does not belong, and making agreements they cannot legally make on my behalf, agreements that directly affect my health and medical certification and my right under The Act.

The District Court erred in its ruling by merely stating there exists a difference in the proper reading of rule §61.53 and did not consider the rest of the argument or the law. The District Court is in no position to impose any treatment or restriction that creates deficiencies in contradiction to the federal standards set by the FAA let alone interpret the rule to allow anyone to impose any treatments. It is evident the District Court did not have clear direction by stating that I am "…almost certainly incorrect…" in my interpretation of §61.53 and resorted to declaring my correction of the Court, in my motion for reconsideration, a quarrel. The Court is in error as the argument will clearly show. There is no room for disagreement over this Public Policy and APA, once it adopted its unlawful position, could not possibly, or willfully elected not to backtrack, or provide any defense in any action taken by American against me for following the regulation. That, by definition, is a failure to fairly represent a member of the craft.

## THE FAA MEDICAL CERTIFICATION AND MEANING OF §61.53

Pilots and Health go together, and for the benefit of this Court and for the record, I will elaborate once more. A true event will illustrate to this Court how FAA regulation 14 CFR §61.53 applies, how personal and operationally exclusive it is, and how it relates, among other factors, to the facts in this case.

To summarize the process of obtaining an FAA medical certification, the following is true. Congress passed The Act which created the FAA. The FAA sets the health standards and authorizes private citizens, doctors who become Aeromedical Examiners (AMEs), to conduct physical examinations

and issue medical certificates. The FAA does not require any medical treatment or medication but may authorize such treatments or medication if desired by the applicant pilot. The applicant, a pilot, submits a statement of health, at the time of examination, that is subject to 18 U.S. Code §1001. A very high percentage of the examination is reliant on statements made by the applicant. If the applicant passes the examination, a medical certificate must be issued. Medical certificates are of different duration and must be reissued for the continued exercise of the right to transit by a pilot. In between examinations, the pilot must continually evaluate and meet the medical standards, and the FAA has vested that authority in the pilot. That authority, to maintain the standard, may not be passed or delegated to any other entity, person, or airline, and airlines may not make health statements on behalf of the pilot. It is a contractual agreement between the pilot and The People that neither APA nor AA can be a party to. The medical certification is a shared contractual responsibility between the pilot and the AME as confirmed by the only two signatures on the medical certificate.

A true event. Scott was once my co-pilot who on the descent into Phoenix declared he could not breath. While he assured me that he was not experiencing a heart attack, Scott, who was near incapacitation, went on crew oxygen and recovered after a few minutes. Scott removed himself from duty and a doctor, at a later time, determined that a heavy breakfast Scott consumed earlier, before the flight origination, induced a heavy indigestion that prevented Scott from breathing. As trivial as a discussion of the effects of a simple breakfast may sound, a two-man crew flight deck was transformed into a one-man crew, increasing the risks and potentially the safe outcome of the flight in the event of any mechanical failure, or any emergencies that might have arisen. Armed with that information, Scott and only Scott, knows and has a reason to know of a medical condition that would make him unable to meet FAA medical standards. Therefore, only Scott can determine the amount of food he consumes to remain in compliance.

The FAA has identified activities that pilots should not undertake or medications they should not use if planning on operating aircraft, some of which are scuba diving (FAA Airmen Information Manual (AIM) 8-1-2 (d)), blood donation (Aeromedical Guide) or alcohol consumption (Federal Aviation Regulations (FAR) 14 CFR §91.17). There are many over-the-counter drugs that are not authorized for use by pilots. These are all identified activities that have known lasting side effects on human physiology and are directly subject to FAA and pilot decision making. To be clear, the FAA does not prevent a

pilot from engaging in these activities or using such drugs, however, if a pilot decides on an activity or a certain drug use, the pilot should not plan or intend on operating aircraft, and even if cleared by the FAA to do so, he is still required to comply with §61.53. Put differently, a pilot should not engage in any activity or use any drugs that he knows or has a reason to know would cause deficiencies, if intending on operating aircraft. I am certain this Court recognizes how critical the health of a pilot is and the dynamics affecting his decision.

All activities, whether identified or not, are subject to rule 14 CFR §61.53. The rule defers the decision to the pilot, and FAA documents refer to it frequently. For example, 14 CFR §61.53 is printed on a pilot's medical certificate, which must be in the pilot's possession, a reminder for the pilot to continually meet the FAA medical standards, and while it certainly calls for removing oneself from any flight duty if feeling ill, it is a planning tool. Only Scott knows the effects of a heavy breakfast. For Scott to fulfill his contractual obligations, complete his scheduled sequence of flights for AA, and maintain the standards of his medical clearance, should he consume a heavy breakfast prior to operating an aircraft for AA in the future? Only Scott can make that very personal decision.

In contradiction to Judge Rayes's conclusion in Doc. 17 at 5, only Scott can make that very personal decision when at the breakfast table at his hotel. Not even Congress can create a policy where pilots are only allowed to consume certain meals, or the amounts they consume, or pass any law that creates any deficiencies of any level, as I am certain this Court agrees.

Rule §61.53 is masterfully written and covers anything and everything past, present, and future, that may cause a pilot to not meet the standards of an FAA medical certificate, it gives the authority and exclusivity in decision making to the pilot, and the pilot must do his utmost to prevent any possible incapacitation, or any deficiencies, no matter how minute, affecting his health. Travelers on aircraft, including members of this Court, deserve nothing less than physically and mentally fit pilots.

APA and Judge Rayes cannot assume responsibility by directing Scott's meal activity in accordance with their interpretation of §61.53 or any contractual language. Will they decide for Scott what to eat? That must give this Court a long pause. It is not Congress's intent for unions or airlines to intervene in the health maintenance of pilots and co-pilots and there is no law

in The Act or the RLA giving them that authority. Unions' statutory authority is restricted to negotiating rates of pay, work rules, and working condition. A pilot medical certificate, once again, is not a work rule or condition and is not negotiable.

The FAA has a non-intervention-based policy and has set the standards for pilots to meet, and airlines under 14 CFR 121.383 must only use FAA qualified pilots. (It is very important to note that an FAA qualified pilot must meet the FAA medical standards and the FAA does not require any treatment of any pilot in order to meet the medical clearance standards.) APA enabled AA, by agreement and collusion, to circumvent the law and coerce pilots into submitting to policies created by American that violate the pilot authority over health decisions affecting their medical certification and Public Policy. With all due respect, Judge Rayes is certainly incorrect and Public Policy in §61.53 gives the pilot unilateral authority in determining all health matters, including rejecting breathing restriction or any medical procedure, that affect his medical standards.

The intent of the language in the FAA rule is clear, and if different than illustrated above, §61.53 would have been worded differently. Take for example, 14 CFR §107.17. Under §107.17, there are no medical standards or any contractual obligations of passenger carrying activity. It simply states in part that "…No person may manipulate the flight controls…if he or she knows or has reason to know that he or she ***has*** a physical or mental condition…" In comparison, §61.53 states "…knows or has reason to know ***of any medical condition that would make the person unable to meet the requirements for the medical certificate***…" A pilot does not have to be suffering from the condition, he has to plan his activity carefully so he would not create any known future adverse medical condition or deficiency affecting the standards of his FAA medical clearance, if he intends on operating aircraft, and further make health statements accordingly under penalty of law. If that is not the case, airlines will never get off the ground and doctors will have to be at every gate checking pilots before every departure. That is not the case and pilots must execute contractual agreements with The People before every flight, which APA can never be a party to, or in any way authorized to dictate any condition or make agreements with AA respecting health decisions pilots make.

To further illustrate, a pilot typically operates a sequence of flights over a several days period. The airline, bar any unforeseen medical condition, expects their pilots to maintain their health and be available to complete their

sequence. The pilot has the responsibility to maintain his health. That is the contractual language in my AA employment agreement. After all, there is a schedule to keep and people to move safely. If pilots did not plan their fitness, flights will never be completed as scheduled. In this document, https://www.faa.gov/pilots/safety/pilotsafetybrochures/media/FitFor_Flight.pdf the FAA gives guidance to pilots to maintain a high health standard and specifically indicates that it is a lifestyle that pilots must continually maintain their health, it does not magically start at the flight deck door or at the whim of an airline or a pilot union.

For example, you are returning home on the last scheduled flight of the day. Your only pilots are preparing for their duty. One of the pilots did not get enough rest and he knows that if he reported for duty, he would not meet the health standards after 2 hours of the 4 hours flight. At the moment he is not tired, but he has a reason to know that in 2 hours he will be fatigued and not able to meet the medical standards. The pilot must use §61.53 in making his determination and remove himself from duty. 14 CFR Part 117 details duty limitations for pilots and addresses fatigue issues and future projections. (Fatigue is a medical condition) I experienced a situation similar to that on one of my assignments. After being on duty for almost 11 hours, AA assigned a flight from Phoenix to Miami. I felt fine when reporting for duty but because of a slight delay in the arrival of the aircraft I would be taking, I determined that by the time I arrive at Miami I would be fatigued. The only solution was to remove myself from duty. Future projection of the physical condition of a pilot is critical and this is one of the ways §61.53 instructs pilots to comply.

Same scenario. The pilots came in late the night before and all restaurants were closed. The next day, since it was a weekend, there was only one restaurant open for business. One of the pilots learned from other crew members that the food quality at that restaurant is substandard and that several pilots were sick hours after eating there once. Should the pilots eat at that restaurant any way and take a chance with 200 souls on board, or should they forego the idea and find something else that is more suitable. §61.53 would tell them that if they knew of the slightest possibility the food would sicken them, they should not consume it if they plan on operating an aircraft. The decision must be obvious.

The examples can be endless in the life of an airline pilot. §61.53 is applied constantly and a pilot must constantly evaluate his health decisions, even when not on duty. Alternatively, and according with the District Court's

opinion, others are allowed to make health decisions for a pilot including masking because, according to the Court's interpretation of 14 CFR §61.53 "…Nothing in this section even arguably gives Saliba the unilateral authority to decide whether to comply with a mask mandate policy, especially when that policy did not require him to wear a mask while actually piloting the airplane from the flight deck." (For which the Court was incorrect, Doc. 1 at 15:1-9) I strongly disagree. Either, the Court did not read my complaint, or it summarily dismissed my true statements. (AA's mask policy required pilots to wear a mask on the flight deck) The law and the FAA give the pilot the exclusive and sole operational authority in the determination of what affects their medical standards. The TSA complied with EO 13998 and issued a mask exemption for pilots in §F3 of the Security Directives.

The airlines also play a role. Although it is not regulated, airlines have for decades adopted, for obvious reasons, the practice of serving their pilots two different type meals. Pilots' health is nothing to consider lightly. Even after the events of 9/11, pilots, including myself, who may have otherwise accepted gifts from passengers, such as chocolate or food or drinks of any kind, became very cautious not to accept anything from strangers. Healthy and alert pilots at the peak of their performance are the foundation of safety and using any drugs or restricting breathing is nothing to consider lightly.

Here are a few main reasons for all the talk about §61.53 and the medical certificate. 1) There is a standard set by the FAA that must be maintained by the pilot, not the airline or the union. 2) It is the pilot's contractual responsibility to maintain the standard. 3) It is Public Policy. 4) It is a right of United States Citizens to obtain a medical clearance in order to exercise their right to transit the navigable airspace. 5) APA cannot agree to AA's new medical standard by which they unlawfully operate under authorization given to them by the FAA. 6) Any administrative action taken by the FAA is taken against the pilot holding the medical certificate, not AA or APA. 7) I have been complying with the regulation for the last 38 years without any violation and that more than qualifies my interpretation and understanding of the rule. 8) Neither AA nor APA can lawfully make health statements on my behalf, and 9) Today's environment has given §61.53 a well-deserved appreciation and understanding.

It is important to note that a pilot certificate and the accompanying medical certificate that authorizes a pilot to operate aircraft are a right of United States Citizens and Public Policy. The Act affirms that in Section 104. Briefly

stated, the power that resides with The People is vested in Congress to create the law, Congress passed The Act in 1958, The Act created the FAA, and the FAA granted the authority to pilots to operate aircraft in the navigable airspace, provided they meet the physical and mental standards set by the agency. That is the law, and The People deserve nothing less. AA and APA cannot interfere in the application of the law.

As a member of the class, I enjoy exercising my right as a pilot. Passengers exercise their right by contracting with qualified pilots. According to FAA statistics, there were slightly over 720 thousand pilots at the end of 2022 who held a medical certificate. I fly my own aircraft privately and any medical procedure that AA imposes in agreement with APA, or any interpretation of the rule by APA, invades my right and Public Policy. A mandatory medical treatment policy created by AA that is not regulated by the FAA is not confined to AA's operations, it affects me personally and everyone in the United States. There is a federal standard that AA must comply with, and the authority vested in pilots must be respected. AA does not have the authority to dictate medical standards in agreement with APA and there is no aviation law supporting that position.

The authority granted to the pilot is Public Policy and pilots may not grant that authority over their health to any other person, entity, or corporation, and specifically, the law does not support unions entering into negotiations or agreements that subvert that authority. Simply put, the responsibility falls squarely on the shoulders of pilots. 18 U.S Code §1001 carries harsh penalties for making false statements related to a pilot fitness for duty or health declaration when applying for a physical examination, (FAA form 8500-8 / Approved OMB NO. 2120-0034 in the notice section) and AA pilots must also make that statement before every flight and of their own volition in accordance with 14 CFR §117.5. Making statements of fitness by pilots is the foundation of the contract with The People who we carry and an obligation that only a pilot can assume.

The danger in allowing AA and APA to agree to other than FAA medical standards opens the door for AA, in agreement with APA, to demand future medical treatments at will. It is a slippery slope, and AA will naturally interfere, as it has already done and has APA, in health decisions a pilot makes as their accounting spread sheets demand, and AA, a for profit corporation, will tailor the treatments pilots will be required to receive to boost their productivity at the expense of the pilots' health and safety. For example, when fatigue calls

become frequent, AA will demand their pilots consume energy drinks to boost their productivity or will arrive at an agreement with APA to do so. Already, in certain training modules, AA instructs pilots on the use of something termed "Nappuccino", the practice of consuming a Cappuccino and immediately taking a nap for 20 minutes after which, a pilot would stay alert for hours. The need to maximize the work group productivity has already been demonstrated today by AA's rationale for demanding medical treatments to ensure productivity of the work groups and reduce absences. AA does not have that authority and must only use FAA medically qualified and cleared pilots who meet the FAA medical standards, not AA medical standard, and APA cannot make agreements that alter the standard. The Courts have a duty to protect the constitutional contractual rights of pilots and the American travelers.

The FAA did not regulate or require any of AA's mandatory medical treatment or policies. The FAA simply states that pilots must comply with §61.53. It must be clear to the Court that the FAA may authorize the use of a certain drug or practices, but the authorization is not a requirement, and pilots must follow the law, and the law is §61.53 and 14 CFR Part 67.

The FAA does not require any medical procedure of any pilot wishing to obtain a medical clearance for the simple and logical reason and that is because a medical clearance is a right and requiring any medical treatment is an invasion of medical autonomy, and further, because of the inability of the agency to lawfully assume risks associated with any imposed medical treatment. The FAA administrator stated unequivocally to Congress that the FAA will not regulate masking. Here is the link to that testimony https://www.youtube.com/watch?v=mYeNyLw71rYAA and a link to the story https://thehill.com/policy/transportation/aviation/503344-faa-says-it-wont-make-masks-on-planes-mandatory/, that means AA's policies were not regulated by the FAA and are unlawful, and so is APAs position. AA, in collusion with APA, was operating outside their approved operating certificate issued by the FAA. AA required, and APA agreed to the requirements, of medical procedures of its pilots, all the while neither is lawfully able to assume the risk and responsibility associated with such procedures or the authority to impose such procedures under the FAA rules and regulations.

I did meet AA halfway on January 6, 2022, and offered that I would do anything they asked me to do if they were able to show they have the authority over my medical certification, and would assume responsibility and the risk, sign my fitness for duty and flight release documents, (Flight Release document

details specifics for a certain flight such as the amount of fuel, flight route etc.) which are contractual and required by the agency, but AA refused. Offer made and offer rejected. AA rejected because, legally, AA is unable to do so, and APA, a pilot union formed by and for pilots, knows that as well but violated their duty and interfered in other pilots medical decisions.

When members of this Court exercise their right to traverse the navigable airspace and board an aircraft, take the time to look into the flight deck and wonder, what did the pilots have for dinner the night before? What kind of medications did they use? What kind of medication were they demanded and forced to mandatorily use by their airline under threat of termination, and what kind of side effects do these medications have, and when would these side effects manifest? Did they get enough sleep? Did they spend the night in a hotel room where the windows did not open, and what quality air did they breathe? Think about what may affect their health as they prepare for flight. Then go to your seat and relax. Historically, you would be able to do so because, the FAA, the watchdog of aviation safety, has set the standards and vested the responsibility and authority in pilots to maintain their health, and pilots, in general, take their health and safety very responsibly, except for the fact that AA, in agreement with APA, like most of the airlines have set a new medical standard and your pilots may not be lawfully qualified.

The above argument is more than adequate to illustrate how a pilot receives and maintain an FAA medical certificate and who has the authority to make health decisions affecting said certificate. Abdicating authority can have dire consequences and, in this case, we can witness the results of abdicating one's authority over a very short span of time as illustrated below.

As a result of APA's failure to represent me and all the pilots at AA and their departure from their statutory authority, there has been some irreversible damage sustained by some pilots. Stripping a pilot of his authority under threat of termination and forcing him to restrict his breathing leads to forcing him to accept other medical treatments that are deadly. At this moment I want to share with the Court the following true events that I and others believe resulted from the invasion of Public Policy and violation of duty of fair representation. This information is public, but I personally know two of my colleagues who suffered as a result of the medical treatment demanded by AA and facilitated by agreements made between APA and AA. According to the widow of one captain, Wilburn Wolfe who was once my co-pilot, he suffered a severe reaction immediately after the treatment of the J&J product and expired 17 days

later. The J&J was on hold by the FAA but neither AA nor APA made that public to the pilot group. Another captain, Bob Snow, suffered a heart attack or cardiac arrest six minutes after landing at DFW with over two hundred souls on board, coded three times and now lives with an implanted defibrillator. Captain Snow, who was on a news broadcast, credits his heart attack to the same medical treatment, the J&J, he was forced to accept. I have no reason to doubt the accuracy of these accounts. There are many more pilots who are losing the ability to maintain a medical certificate due to the medical treatment they were forced to receive at AA. APA, now under new leadership, put out a graph showing a 300% increase in long term disability year over year for 2021 and 2022. Stories like these are cropping up day after day and pilot incapacitation is on the rise. My very first flight instructor who sent me on my very first solo flight in 1984 at the Oakland airport across the bay, now retired from Hawaiian Airlines in 2013, who by choice decided to receive the Pfizer treatment, also suffered shortly after the second dose he received, and now he frequently visits his cardiologist for treatment for one of the advertised side effects of the drug. This is a real threat to the airline industry. This not only gives me a reason to know but also a reason for a very long pause. It is a very slippery slope to allow airlines and pilot unions to make agreements that invade Public Policy, incentivize, and encourage pilots to accept medical treatments that contradict safety in aviation. The practice must never be allowed.

## THE FEDERAL MASK ORDER

In accordance with 49 U.S. Code §114 (g)(2), the Transportation Security Administration (TSA) issued Security Directives (SD)1542-21-01 and 1544-21-01 (updated alpha-numerically) targeting airport and aircraft operators respectively. The SDs included an applicable and identical exemption for pilots in §F3, an exemption that no one wants to talk about. This Court must agree that §F3 language was specific and exempted pilots from facial covering while transiting airport terminals and while on duty for aircraft operators. The exemption did not target any worker in a non-safety sensitive position. The exemption follows the law and supports the fact that pilots' health and aviation safety are paramount, inseparable, and that pilots operating under federal regulations who must meet FAA medical standards at all times must be exempted.

President Biden's Executive Order 13998 stated that any policy developed must be "consistent with applicable laws." The law does not allow

for the creation of any deficiency and pilot health standards are subject to federal law and Public Policy. The health of a pilot and the safety of passengers do not begin at the flight deck door. Even though this fact was evident in exhibits supporting my argument, the lower Court completely disregarded the existence of the F3 exemption and declared that APA may develop opinions that are contrary to these principles, Public Policy, and the exemptions and further declared that the rule does not give Saliba the unilateral authority to not comply with the mask order. I disagree with the Court's opinion for I am always in compliance with the rule of law.

## APA ACTIONS IN DERELICTION OF THEIR DUTY

APA is well aware it does not have authority by statute or the law to make agreements with AA that supersede Public Policy and the pilot authority over his medical certificate, however, APA found a workaround and deliberately and willfully made agreements with AA to accomplish what they could not legally and lawfully accomplish, at the expense of my livelihood.

Under the RLA, disputes are classified into two categories, major and minor. Major disputes involve the creation or changing of collective bargaining agreements (CBAs) on rates of pay, work rules and working conditions and are subject to conciliation procedures that are purposely long and drawn-out. Unlike other industries, CBAs under the RLA do not expire on certain dates but remain in full force and effect until changed in accordance with the procedures of the RLA. Of course, reaching an agreement and signing a Letter of Agreement (LOA), as APA and AA did in LOA 21-002 (Exhibit H in my response to APA motion to dismiss) is a resolution to a dispute.

Minor Disputes are disputes that arise out of the interpretation of existing contractual rights. Courts have ruled that a dispute is minor if the employer's action complained of by a contract employee is "arguably justified" by the collective bargaining agreement. An agreement invading or superseding Public Policy and the authority of a pilot over his medical certificate is not justified under the law.

If APA had the authority, and it certainly does not, masking of pilots would have been classified as a major dispute requiring a drawn-out process, however, APA disregarded the process and, without officially signing an LOA, sided with AA and adopted a non-opposing position that lacked any foundation

in law, which is exactly why APA did not use the major dispute process. APA could never lawfully and legally sign an LOA agreeing to masking of pilots. APA adopted the "It is easier to ask for forgiveness than permission" mantra and is relying on the Courts to side with their actions. The law is the law and APA broke the law.

Under the RLA §152 Seventh. Change in pay, rules, or working conditions contrary to agreement or to section 156 forbidden. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title. §152 Tenth. "…willful failure or refusal of any carrier, its officers, or agents, to comply with the terms of… seventh…of this section shall be a misdemeanor…" and "…it shall be the duty of any United States attorney to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States…" In collusion, APA failed to comply when AA changed terms in the agreements.

For example, LOA 21-002 language indicates the parties agreed that it is the pilot's choice whether to receive a medical treatment, and that the treatment was not mandatory. Once the incentives and money were "flashed" before the pilot group and majority of the pilots accepted the offer, AA moved and, in violation of the LOA, made it mandatory, APA did not object or amend the agreement. The work around on AA's side was to offer exemptions/accommodations to pilots for medical or religious reasons (There was no way for AA to know whether pilots do or will have medical or religious reasons which renders it mandatory) which in and of itself may sound acceptable, however, on close examination, it is a breach of the agreement to which APA did not object and paved the way for AA to violate a pilot's authority over his medical certificate, an authority given to the pilot by The People. Again, APA turned a blind eye in collusion with AA and failed their duty.

§156. Procedure in changing rates of pay, rules, and working conditions. "Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions…rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon…" There is a set procedure under the RLA that both parties must follow

to reach agreements or amendments to the agreements. In this case the process was not followed, and a quasi-agreement was reached in which APA adopted a non-opposing position to AA's pilot masking policy which was not memorialized in a written agreement or an LOA. The process was not followed because neither AA nor APA could enter into such agreement that supersedes or invades Public Policy. Instead, failing its duty to represent the pilots, APA turned a blind eye to AA's actions.

AA initially disciplined pilots, who did not wear a mask, outside of the JCBA process, and as pilot complaints swelled, APA agreed to AA's use of the disciplinary process reserved for minor disputes in violation of the JCBA. Masking of pilots is ***not*** a term in the JCBA or in any LOA reached by the parties. APA violated the very JCBA they negotiated with AA and the RLA and by adopting an unlawful non-opposing position, it stripped its ability to present any defense in any disciplinary action by AA, and by doing so, APA failed their duty to represent my interests. In short, APA unlawfully served the interests of AA and stripped its ability to mount any viable defense in my favor. As the record shows, I insisted on a plan of defense that APA would present, and APA never presented any plan of defense whether it aligned with my desired defense plan or otherwise. APA failed and couldn't possibly represent me in any way. APA simply acted in a perfunctory fashion to project the illusion they complied with their duty to fairly represent me. By sticking to their unlawful position there was no way that APA could have possibly represented me fairly. The outcome of any proceeding was preordained by AA and APA. APA failed its duty of fair representation.

The District Court opined that, APA and I had a disagreement over the proper reading of the relevant FAA regulations, and that these types of differences of opinion are insufficient to support a breach of duty of fair representation claims. I disagree with the opinion of the Court. What we have, in addition to their failure to provide fair representation, is a fundamental breach of duty by APA.

The flaw of the Court's opinion also rests in the fact that the disagreement is not related to any term in the JCBA, or any law related to any term in the JCBA. The disagreement may not even be addressed or resolved through any arbitration as an end of process under the RLA for it is Public Policy, and arbitrators may not extend their authority or supersede Public Policy, especially in a medical certificate related matter that is very personal and exclusive to the pilot under the authority of the FAA.

Additionally, a pilot medical certificate is a term of the contractual agreements between the pilot and the FAA, the agent of The People, and neither APA, AA, the arbitrators or even, with all due respect, the Court can be a party to, and therefore may develop an opinion about its application.

APA's failure is fundamentally grounded in their deviation from their statutory authority granted to unions by Congress, the RLA, and the Supreme Court and any protections these authorities afforded to them.

APA positioned itself outside its statutory authority and the JCBA. Executive Order 13998 directed agencies to meet the heads of unions to implement masking in the transportation sector. Sec. 3 (b) of the order, *Consultation*, stated: "In implementing this section, the Secretary of Transportation and the Secretary of Homeland Security shall engage with interested parties, including State, local, Tribal, and territorial officials; industry and ***union representatives from the transportation sector***…" in Sec. 4 of the EO *Support for State, Local, Tribal, and Territorial Authorities*. "The COVID-19 Response Coordinator, in coordination …inform agencies of options to incentivize, support and encourage widespread mask-wearing …consistent with …***applicable law***." APA became a state actor in the implementation of EO 13998, colluded and made agreements with AA and helped enforce the masking of pilots in violation of the JCBA and the RLA, which restricts their authority to negotiating rates of pay, work rules, and working conditions. As already stated, an FAA medical certificate is none of the above.

Furthermore, APA secured incentives that played a major role in the coercion of pilots into accepting medical procedures in contradiction to historical practice and federal aviation law. APA did not act in accordance with the law but rather, superseded the law and was in collusion with AA and the State to accomplish what AA or the State could not alone.

APA was an active participant in implementing masking of pilots in violation of their authority over their medical certificate and duty under the RLA. APA colluded with AA and the State, as my exhibits evidenced, to promote and encourage pilots to restrict their breathing while in public, put on a public display, and even on the flight deck at times, in direct violation of the federal regulations. A display of obedience at the expense of safety, and as a means of accomplishing a political agenda. That process laid the foundation

for the coercion of pilots to accept, under threat of termination, other medical treatments that, in some cases, proved to be detrimental to their health and life. APA was a willful participant in State activity that undermined AA pilots' authority over health decisions affecting their medical certificate.

APA did not act as a pilot union but as an AA complicit partner and an agent of the State to promote a political agenda that violated the Federal Aviation Regulations and its statutory authority. In collusion with APA, AA coerced pilots into compliance with medical procedures dictated by AA and financially incentivized by the State and AA. APA, in addition to the role it played in the implementation of the order, and by assisting AA in the use of the grievance process, acted as a state actor right along with AA during the disciplinary process that AA subjected me to in coordination with the Spokane Airport Police. AA and APA ran roughshod and subjected me to a disciplinary process, unlawfully implemented, not grounded in any term of the JCBA and specifically the masking of pilots.

Through their actions, acting as a state agent, APA interfered with and violated my right to contract, a constitutionally protected right, my right under The Act, and infringed on my Fourth Amendment right to be secure in my person.

Aviation law violation and Private Right of Action

The lower Court ruled by relying on the Ninth Circuit's holding there is no private right of action for aviation law violations.

Law is alive, and findings in new cases create new opportunities and new case law. My argument, now that this Court is familiar with it, will once more demonstrate to this Court that, in this case, there must be an implied private right of action, a new path for this Court.

This case is not about a lost bag, or a delayed or canceled flight where someone missed an important meeting. This case is about the very foundation of aviation – safety and the authority of the pilot over health decisions he makes to meet federal medical standards – Public Policy. It is about serious violations of aviation law by APA in collusion with AA.

The case is novel and demands a novel approach and analysis. Never in the history of aviation have airline pilots been demanded to mandatorily accept any medical procedure as a requirement for employment or continued employment, and the FAA has never been silent on the matter like today. There is no aviation law supporting airlines and pilot unions, as agents for pilots, agreeing to terms that force pilots to accept medical treatments and there is no remedy under The Act for such a violation.

In part, I will rely on Laughlin v. Riddle Aviation Inc., draw a parallel in a two-prong approach leading to one conclusion.

In Laughlin, the Fifth Circuit Court found an implied private right of action, reversed, and remanded the case for proceedings. That ruling leaves room for this Court to reverse.

First prong:

Congress never envisioned or expected air carriers to actively create specific mandatory policies that undermine aviation safety and invade Public Policy and neither did it expect unions to partake in such a scheme. Congress passed The Act that created the FAA which promotes safety by creating rules and regulations, many of which are the result of fatal aviation accidents. The FAA is the watchdog and the enforcer of any violation or infraction through administrative action.

There has been a relationship between the FAA, the airlines, and pilot unions that fosters safety in aviation. I can attest to that through my 38 years in the aviation industry. What happened in this case is novel, extremely unorthodox and unexpected. The FAA did not actively move to promote safety first and only issued recommendations. AA shifted its focus to financial solvency with the aid of APA, at the expense of passenger safety and in the worst possible way, undermining pilot health standards. The FAA adopted a passive approach and did not regulate any of the airline's procedures including masking of pilots.

Pilots are at the pinnacle of aviation safety. (Aircraft mechanics and flight attendants are as equally important in the aviation safety equation) AA invaded Public Policy in collusion with APA and demanded mandatory medical treatments of its pilots.

The FAA under former Administrator Captain Steven Dickson, did not regulate facial covering in aviation, nor does the FAA require any medical treatment for pilots. What does that mean for the pilot population? It means that the FAA did not conduct any studies to determine the effects of facial covering on pilots who operate aircraft at high altitudes, or on passengers. The FAA did not amend their data, or conduct any new studies, to determine the time of useful consciousness of crew and passengers in case of a rapid decompression while covering their nose and mouth, and their response time to don an oxygen mask. (A rapid decompression is when the cabin altitude goes from around 7500 feet to 39000 feet instantly where partial oxygen pressure cannot sustain life) AA had the option, without conducting new studies or implementing new training and procedures, to operate at lower altitudes where emergency oxygen would not be required, such as flying at or below ten thousand feet. That would not have been economically viable. AA did not adjust their operations considering the added risk and continued to use the more economically desirable and much higher altitudes. APA came to the aid of AA by suppressing any dissent in the pilot ranks and allowing AA to unlawfully use a disciplinary process in the JCBA. APA, in violating 14 CFR §91.11, interfered in pilot duties onboard aircraft.

AA did not train any crewmembers on emergency procedures while wearing facial covering or had any approved training program to conduct such training in accordance with 14 CFR §121.417. Such training would have been costly. I can attest to the fact that I never received any such training. AA operated outside their operations specifications and required crew and passenger to cover their nose and mouth restricting their breathing. AA was willfully flying blind, and APA, again a pilot union formed by airline pilots, agreed to it.

If it may be accurate to say that AA may have the right to demand masking for passengers, it is more accurate to say that AA had the obligation to implement procedures and training to mitigate the additional risks as a result of the practice, AA did not, and APA did not object but rather indicated their approval. APA entered an arena that is not within it statutory authority.

The FAA did not conduct any studies to evaluate the side effects of any medical treatment such as restricting breathing for pilots. The FAA stated they would evaluate the effects of medical treatments on the pilot population and adjust as necessary. In and of itself, that statement deserves a very long pause

and is an indication the FAA was, for all practical purposes, experimenting on the pilot population with newly introduced drugs and medical procedures. The recommendations were for all pilots whether they were airline pilots or general aviation pilots, they all operate under the same Public Policy.

Historically, such studies are required before issuing any new regulations involving human physiology or aircraft certification, and the FAA simply abdicated their safety practice and authority in aviation in favor of a politically correct and economically expeditious position for the airlines.

For example, the FAA abandoned their historical practice of a mandatory one year waiting period after the final approval of medications for pilot use in favor of the Emergency Use Authorization (EUA) drugs, however the FAA directed pilots to comply with §61.53 and maintain the standards of their medical certification. As stated above, this was a recommendation by the FAA, but pilots must follow laws and §61.53 is the law. The approval was for pilot use and not airline dictation of new airline policies. The question must then be, how does a pilot maintain the FAA medical standards and comply with §61.53 after using a drug under EUA with untimely manifested side effects, side effects that manifest more than the 48 hours wait period the FAA recommends, and possibly weeks if not months, such as blood clotting, Myocarditis, or Pericarditis, or while restricting his breathing. Does the AA pilot represented by APA wait until he is sick to make that determination, or does he plan ahead utilizing informed consent, and, since APA entered an area that is not in its statutory authority, rely on his representative to protect his interest? APA simply served the financial interest of AA at the expense of the pilots. Nothing in the RLA gives APA the authority to serve the interest of the carrier first.

Not to be misconstrued, that change, or approval was not an authorization for airlines or the unions to mandate or agree to or compensate for any medical procedure. The guidance was directed at pilots, not airlines, or unions. It was simply an allowance for pilots who chose to receive a treatment to do so but were urged to follow the law. To be more specific, neither AA nor APA received authorization from the FAA to enforce masking on pilots or dictate any other medical treatment, and the operating certificate of AA did not reflect any such authorization.

In Laughlin, the Fifth Circuit stated, "A disregard of the command of the statute is a wrongful act, and where it results in damage to **one** of the class

for whose especial benefit that statute was enacted, the right to recover the damages from the party in default is implied." The implications and intendments of a statute are as effective as the express provisions.

There is no question that following the regulations is of utmost importance, for it is critical in a life-or-death situation directly affecting the pilot in command (PIC) and his passengers. There is no doubt I am the beneficiary of The Act and I pass the benefits to my passengers under contract by operating safely and by following the rules, but what happens when the carrier, with the aid of the union, forces a pilot to violate the rules? Especially when there is no remedy in The Act to correct the violation other than administrative action against the pilot.

Safety is the goal and today's passengers take it for granted, and, as I have seen many times, passengers are upset if their pilots do not show up or are very excited when they do after a long delay, however, in my entire career I may have been asked only a handful of times how I was feeling. People expect their pilots to be fit and healthy, as they should, and I believe that is the image that is imprinted in people's perception. It should stay that way and forcing medical treatment on pilots does not keep it so.

The effects of what APA is engaged in.

49 U.S. Code §42112 states that, as a pilot, I am "providing" interstate air transportation. As a captain who provides transportation to The People at AA, although I can, I am not simply manipulating the controls of an aircraft to take it from point A to point B, or supervising my co-pilots do the same, I am providing a service, and as such, have legal contractual obligations and responsibilities under which I am personally liable.

14 CFR §91.3 states that as the PIC of an aircraft, I am directly responsible for, and the final authority as to, the operation of that aircraft. Under 14 CFR §1.1 definitions, Administrator means the Federal Aviation Administrator or any person to whom he has delegated his authority in the matter concerned, and as such I am administering the aviation law.

The cited laws above are intended on benefiting the PIC of an aircraft, privately and in commercial operations, they are not words that create a mere illusory right that is not enforceable.

Aviation business is complex, and the larger the operation, the more complex it becomes, and the more elusive safety becomes. An accident is a chain of events, it is seldom an isolated event. The failure of one link may result in a calamity. All the rules and regulations are designed to avert a failure in the chain, and it is critical that the rules are followed. These rules and regulations are designed to "benefit" the PIC, and by default the passengers, in the safe outcome of a flight.

The dictionary defines benefit as an "advantage" or "profit" gained from something. Therefore, these rules and regulation are designed to 'advantage" the PIC. Logic would then dictate, that not following or intentionally violating the rules would "disadvantage" the PIC, and of course the safe outcome of a flight.

Pilots are not immune to personal liability and disadvantaging the PIC may result in financial hardship. The hardship may result from an event in which passengers are injured, or as in this case, by APA, in agreement with AA, subjecting me to hardship for merely demanding AA comply with the law. APA has actively violated the RLA and disadvantaged me as the PIC under the aviation law.

Congress intended on benefitting or advantaging the PIC and the public as a whole. To borrow words from the Fifth Circuit Court, when Congress passed The Act by which it affirmed the People's right to traverse the navigable airspace, Congress did not intend to create a mere illusory right, which would fail for lack of means to enforce it or protect it. A pilot has the right to contract with The People to provide safe transportation and APA has colluded with AA and interfered in that right. The fact that the statute does not expressly provide a remedy should not be fatal here.

Second prong ties into pilot medical qualifications and certification.

As stated in The Act, Sec. 104, I am a member of a class who personally enjoys his right, and the rules and regulations are designed to support that right, while exercising it commercially and privately, and simultaneously protect The

People. The AA created policy, in agreement with APA, of demanding a medical treatment for pilots or creating a deficiency by restricting breathing, is not confined to their operations and directly impacts me in the private, as well as it infringes on and impacts my right to contractual agreements with The People. Again, the regulators never envisioned a case like this, where a carrier in collusion with a union imposes mandatory medical deficiencies or a medical treatment on pilots for employment or continued employment. Air carriers receive a privilege under the act and must comply with the terms imposed.

14 CFR §121.383 requires air carriers to use qualified pilots who have in their possession a valid FAA issued medical certificate. The pilot must meet FAA medical standards. Regardless of any other qualifications, all pilots must meet that requirement. It is the law, and it is Public Policy.

The FAA can only bring enforcement action relating to medical certificate violations or infractions against pilots. Thus, AA and APA know that under federal aviation regulations, they are in no jeopardy forcing pilots into accepting a medical procedure and potentially violate the standard. As such, The Act does not provide any remedy by the agency, the Court is where a remedy can be found.

AA, with APA, simply found a loophole in the law and exploited it to create a second-tier medical standard that is not determined by or under FAA authorization. AA merely demanded a medical procedure, and under threat of termination and with the help of APA, secured the consent of its pilots.

By demanding medical procedures and by securing the consent and compliance by the majority of the pilots, AA created a new medical standard and a new set of second-tier pilots who hold AA-modified or created medical certificate. AA has created a subset of qualified pilots who meet AA's definition of their newly established medical standards. AA is no longer complying with the FAA medical standard; they have their own. APA is complicit in the creation of this standard. ***APA lulled the pilots into believing that APA could negotiate any of their authority over their medical certificate followed by actively colluding with AA to accomplish the political objective as directed by the State.***

APA violated yet another law, 14 CFR §91.11, Prohibition on interference with crewmembers. APA interfered in and colluded with AA in threatening and intimidating crewmembers in the performance of their duties.

APA's actions relate directly to interfering with, threatening and intimidating crewmembers in accepting medical treatments. APA interfered in Public Policy and pilot medical certification affecting the performance of their duties onboard aircraft. A person does not have to be onboard an aircraft to interfere in crewmembers' duties as legally interpreted by the FAA. Public Law 112-95, the "FAA Modernization and Reform Act of 2012." Section 311 amended Title 18 of the United States Code (U.S.C.) Chapter 2, §39A makes it a federal crime to aim a laser pointer at an aircraft. The FAA legal interpretation and regulation in violation is §91.11, concluding a person need not be onboard an aircraft to interfere with a crew member. The unique issue here is that APA's interference causes a pilot to violate medical standards for which only the pilot would face administrative action. Again, there is no remedy in aviation law for APA's interference. A person must find remedy and in this the remedy is in the Court.

The FAA was in no legal position to stop AA from demanding a medical treatment. Their position is simply that of examining pilots, and as stated above, the pilots have the authority by law to make health decisions, and if pilots pass an examination a medical clearance is issued. The pilots were hoodwinked and bamboozled by AA and APA into believing they had no authority rejecting the treatment, and the only other option was an accommodation request which then imposed yet another medical treatment on the pilot. AA and APA successfully practiced deception and trickery to gain the pilots' consent.

There is however the matter of health statements made by the pilots which play a large part in the screening process. This is where this argument turns on the law and true Congress's intent. The process of application for such a physical examination requires a statement of health by the applicant – the pilot – on FAA form 8500-8. (The application for a medical examination) The statement must be truthful and by the applicant's own volition, and it is made under the pains of 18 U.S. Code §1001. This Court must ask, is a person who was threatened with termination, coerced, and provided with incentives (Incentives were in the thousands of dollars as the evidence shows) to consent to a medical treatment that is experimental in nature and under an EUA with known side effects, including death and heart complications, is making that statement truthfully and of their own volition? Was there informed consent? I do not believe so. A statement of health by the pilot is an integral part of the examination process and an untruthful statement may allow deficiencies to slip through the screening process. APA along with AA, were the invisible hand in

the commission of the aviation violation, the creation of and use of a second tiered pilot workforce that only complies with the AA created medical standard. I believe that demanding a mandatory medical treatment is conducive to less than truthful statements on the part of the pilots, and that is where the danger lurks. There is no plausible deniability that APA was not aware of the pilot's authority over their health decisions and the demands of their medical certification. APA proceeded to negotiate that authority away with AA which weakened the pilot resolve to refuse any treatment they do not wish to receive.

In between FAA medical examinations, a pilot must maintain the FAA medical standard. Accepting an EUA medical procedure threat of termination including restricting one's breathing, is not good health maintenance and is certainly not under one's own volition or informed consent, therefore, a statement of health made by the pilot under duress at any time and specifically at the time of application for a medical examination cannot be truthful or accurate, and does not reflect the true knowledge of the applicant, especially when the advertised side effects of these drugs, such as Myocarditis and Pericarditis, and blood clotting, which can cause embolisms and cardiac arrests are known and may untimely manifest. The side effects are advertised by the product manufacturers.

Let's contend that tomorrow I am scheduled to receive my physical examination. Today, as I am walking, I am forced under threat to take a new drug and was informed by the person forcing it on me, that it is safe and effective and that it is under recommendations by an agency. I am not of the opinion that I want to accept it and have reason to know of its serious side effects. I am forced to accept it or else I would not be able to continue on my path. Faced with the prospect of not being able to continue, I consent and am allowed through. The next day I walk into my Aeromedical Examiner's office and start filling my 8500-5 application. I have to make my health statement and sign under pains of 18 U.S. Code §1001. (I must also declare if on any medications) Knowing that the day before, under threat, I received a novel drug I know very little about, know nothing about how it is affecting my health, but know of some serious side effects of the drug, and knowing that I might lose my medical clearance if I declare yesterday's actions, should I include the fact I received a treatment under duress by accepting a drug that I know has serious side effects on my application? Is my health statement true and correct and am I in violation of §1001? The answer should be clear and as intended under the law, a declaration must be made. The application requires pilots to declare visits to health care professionals for the recent three years. Is receiving a medical

treatment at COSTCO, or CVS, or even a drive through station, a visit to a health care professional? Have pilots been making those declarations on their application? The question is not intended to point at what pilots do but rather at the result of what mandatory medical treatment and agreements between unions and airlines can do to aviation safety and precisely why a medical certificate is Public Policy and any medical treatment may not be made mandatory for pilots. It is imperative that, especially in commercial operations where hundreds of lives are in the balance, such statements are true and correct.

Since neither AA nor APA can sign the physical examination application or sign the contractual fitness for duty statements, they both relied on the pilots who consented on making these statements. AA was not only forcing the pilots to accept medical treatments, but also, by reaching agreements with APA, make what may be inaccurate statements on their physical examination application and every time they signed a fitness for duty statement. The alternative was termination.

As argued above, AA may not create a new medical standard of their own to employ or continue the employment of pilots, and APA colluded with AA to accomplish just that in violation of the regulations. AA must use FAA qualified pilots and a true statement of health by the pilot is imperative.

AA exploited that loophole by making their demand an employment matter when it is a Public Policy matter under the Federal Aviation Regulations. By exploiting that loophole, AA created a subset of pilots who may not meet the standards of the FAA medical clearance but do meet AA's unlawful standard. APA aided AA in the creation of this subset of pilots.

By creating and enforcing their new medical standard, AA is sidestepping the requirement of 14 CFR §121.383 and is in violation of the rule. Because of my rejection of their created standard and my disagreement with the premise that AA can create a new medical standard or impose deficiencies, and because APA developed an unlawful opinion regarding authority over my medical certification, AA is disadvantaging me and in retaliation, is keeping me on indefinite unpaid leave, depriving me of my contractual rights and demanding a fitness for duty examination without cause. APA, in a recent communication restated that their position, as declared by Baskaran, has not changed, therefore, APA's impotence is unsurmountable by any process offered and the only remedy is in court.

In sum, AA must use FAA medically cleared pilots who meet the FAA medical standards, not AA's. The FAA cannot and does not require any medical treatment for pilots and AA, with APA's aid in violation of the RLA, struck out on their own. An FAA medical clearance is Public Policy and a right, and only pilots can make health decisions affecting their medical clearance, and subsequently make the health statements required by law. Administrative action for violations of medical standards can only be taken against pilots, therefore, AA and APA are not subject to such action and there is no remedy in aviation law for forced medical treatments by air carriers. By forcing pilots, with APA's blessings, to accept medical treatment under threat of termination, and without informed consent, AA successfully created their new medical standard from masking to forcefully accepting drugs with known and published severe side effects, including heart conditions such as Myocarditis and Pericarditis and potential untimely death, sidelining Public Policy. AA must use pilots who meet the FAA and Public Policy standards not AA's standards and as such APA, in collusion with AA, is in violation of the law. AA relies on pilots passing their medical examinations and if they don't, they will simply hire more pilots while imposing the same medical requirements. Pilots must make contractual health statements as required by law and neither APA nor AA can make such statements on behalf of the pilots.

There is no stated right of action or remedy under The Act for forced medical treatment, but that should not be fatal. I am the beneficiary of The Act and as the beneficiary I must find remedy. This is a novel situation we find ourselves in, a situation that heavily lends itself to an implied private right of action and that leaves me with the only means for remedy – the Courts. There simply is not a mechanism for such a violation instrumentally perpetrated by AA and APA, therefore, the only place for remedy is the Court and an implied private right of action under aviation law violation is appropriate.

As I stated, the FAA, the agency that enforces medical standard, does not require any treatment, and is not authorized to pursue individuals, unions, or corporations who force a treatment; therefore, I must find remedy in other forums, and in this case the Courts.

For simply complying with FAA regulations and exercising authority over health decisions I make in compliance with 14 CFR §61.53 and 14 CFR Part 67, AA carried out a retaliation campaign in collusion with APA. That did not stop APA from declaring that AA is weaponizing the JCBA. By demanding AA follow the regulations respecting passenger safety to advantage the PIC,

and by following FAA established medical standards and refusing to accept AA's created standard, AA has subjected me to disciplinary actions, placed me on administrative leave since April 22, 2022, and demanded a fitness for duty examination, and placed me on unpaid leave since August 22, 2022. AA does not have, nor did they provide any reason for their actions other than their authoritarian approach in forcing compliance. The only thing APA keeps offering is the grievance process which is inapplicable because masking of pilots is not a term in the JCBA.

To borrow the words of the Fifth Circuit again, in prescribing carrier duties to maintain compensation (A benefit) 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. The evidence will show that APA aided AA in their retaliation against me for refusing their demand to create medical deficiencies or accept any medical procedures, and in retaliation, demanded a fitness for duty on April 22, 2022. In the words of the APA lawyer Tricia Kennedy, AA has weaponized the JCBA in retaliation for my position of disagreement with AA. AA continues the weaponization of the JCBA today and APA refuses to bring lawful remedy.

Considering the argument above, this Court must find an implied private right of action for APA's violation of aviation law, in collusion with AA, to recover what I am entitled to under the JCBA.

## DISTRICT COURT AND APA CONSTRAINTS

The District Court's ruling, among other things, is flawed and constrained by EO, law, and Federal Aviation Regulations (FARs).

Article I, Section 10, Clause 1 of the Constitution prohibits the District Court from infringing on my right to contract with The People. A decision by the Court that imposes any condition or restriction that creates any deficiency affecting my medical certification standard in contravention to the 14 CRF Part 67 and the FAA rules and regulations, infringes on my right to contract with The People, thus it is flawed and must be disallowed.

President Biden's EO 13998 states Sec. 2 (c) *Exceptions.* The heads of agency may make categorical or case-by-case exceptions to policies developed under this section, consistent with applicable law, to the extent that doing so is necessary or required by law, and in Sec. 6 *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect: (i) the authority granted by law to an executive department or agency, or the head thereof. Even the President of the United States, with good intentions, is unable to issue orders that violate the law. Similar language exists in EO 14042 in Sec. 7.

49 U.S. Code §114 (g)(2) TSA; Authority of other departments and agencies may not be superseded by the TSA whether or not during a national emergency. TSA issued SDs 1542-21-01 and 1544-21-01, in accordance with 49 U.S. Code §114 (g)(2) and in compliance with federal law, which EO 13998 demanded. The SDs contained a mask exemption for pilots in paragraph F3.

The FAA, the agency with authority over pilot operations, did not regulate masking, and does not require any medical treatment for the issuance and maintaining of pilot medical certificates. No other agency or Court may have authority over the interpretation or application of §61.53, and as such the District Court does not have authority to dictate whether my determination of mask wearing, which is in line with authority granted to the pilot by the FAA and EO 13998, is or is not detrimental to my medical certification or readiness for flight, and specifically, the court may not be party to any statements of fitness for flight.

The exclusivity of 14 CFR §61.53. §61.53 interpretation and application are exclusive and operational in nature. Only the pilot may make health decisions respecting his compliance with the standards of issue under 14 CFR Part 67 as applicable to the operation of aircraft, including restricting breathing by placing a mask over the nose and mouth.

The District Court's interpretation of §61.53 is flawed and when corrected in the motion for reconsideration, the court did not provide any supporting law or case law for their interpretation, only a declaration that I am quarreling with the Court.

14 CFR §61.53 is Public Policy and the Court is reminded that unions and airlines may not make agreements that supersede or invade Public Policy, especially as in this case, where they infringe on rights and obligations of the

pilot and create deficiencies that negatively affect the safety of the public and interfere with crewmembers under 14 CFR §91.11

APA adopted a non-opposing position to AA's unlawful policies, diminishing if not eliminating their ability to fairly represent me, thus failing in their fair representation under the RLA. By adopting their non-opposing position, APA was completely outside their statutory authority and couldn't possibly represent me. APA could never provide a plan of defense without abandoning their position or implicating themselves of a violation, therefore, the standard of arbitrary, discriminatorily, or in bad faith is overwhelmingly evident. In other words, the agreement with AA was intentional, in accordance with the wishes of the State, and in violation of Public Policy. It completely obliterated any possibility of the application of the standard of duty of fair representation. APA's actions are simply unlawful and outside their statutory authority under the RLA.

APA's actions were not reasonably grounded in law and well outside their statutory authority. APA assumed authority of interpretation and application of a regulation that is operationally exclusive to pilots and made agreements with AA accordingly. Again, APA cannot begin to make a determination respecting a Public Policy that addresses pilots' health which forms the basis for the contractual agreement between the pilot and the agency representing The People. APA can never make that determination and by doing so it locked itself out of their duty to represent fairly. The argument that there can be a disagreement in the interpretation of the rule is flawed and the only reason there is any disagreement is because APA acted in dereliction of their duty, superseded pilot authority and Public Policy.

An interpretation or a ruling giving AA or APA the ability to determine how pilots may maintain their medical certificate amounts to giving them the authority to dictate medical procedures to the more than 720 pilots in the US, regardless of whether that authority is exercised or not, and by doing so, it makes it law and blurs, if not completely obliterates the line between the legislative and judicial and preempts rules and regulation set by the agency, the Federal Aviation Administration.

The only agency that has jurisdiction over the standards of a medical certificate is the FAA and neither APA nor AA can usurp that authority or the power of The People. Furthermore, such a ruling will allow the airline to create a new medical standard at will. AA, with APA's agreement and in violation of

the law, has already created a new and unlawful medical standard. I have presented that argument in case number 23-15249 in this Court.

The fact remains that APA, under the RLA and 49 U.S Code §42112, may only negotiate for rates of pay, work rules, and working conditions. APA may not supersede or invade Public Policy such as a medical certificate. A pilot medical certificate is not a negotiable item, and neither are any rules that affect such medical certificate standard. APA negotiated payments for medical procedures made mandatory by AA and mislead pilots into believing APA has such authority. APA lack of authority is evidenced by the fact that APA, as legally required by the RLA, never entered into a formal agreement with AA respecting masking, adopted a non-opposing position, and participated in the grievance process dedicated to resolving differences of interpretation and application for disputes over terms in the JCBA. APA violated the process and subjected me to unlawful disciplinary hearings resulting in severe adverse actions by AA resulting in placing me on indefinite unpaid leave since August 22, 2022 and tarnishing my otherwise impeccable record with the airline.

## IN CONCLUSION

APA, in collusion with AA, violated the RLA by arriving at agreements, in writing or otherwise, that invaded and superseded Public Policy and the authority of pilots over their FAA issued medical certificate.

APA, failed to follow the RLA in securing terms in the JCBA or in LOAs, that protect the professional interests of pilots. Allowed AA to modify terms of agreements made without following the rules of the RLA.

By adopting an unlawful position not reserved for APA under the RLA or the Federal Aviation Regulations, APA undermined its ability to comply with the grievance process under the RLA and allowed AA to subject pilots to unlawful discipline over terms that are not in the JCBA or subject to interpretation and application.

APA surrendered authority it does not have to AA and colluded in imposing the will of AA on the pilots including myself which has caused great financial harm and left me at the brink of the destruction of my career and medical certificate.

APA is still engaged in negotiating terms of agreements that supersede and invade Public Policy, terms respecting a pilot medical certification and authority over health decisions pilots make in maintaining their medical certification.

APA has stepped outside the union arena, and in collaboration with the state, delved in matters reserved for pilots. APA helped shape policies as a state agent, policies that a state is unable to develop or impose. APA acted under the color of law in their efforts and collusion to impose conditions on the pilots they represent.

APA has filed it DFR.

**PROCEEDINGS BEFORE THE DISTRICT COURT OR THE BAP.** In this section, we ask you about what happened before you filed your notice of appeal with this court.

3. What did you ask the district court or the BAP to do—for example, did you ask the court to award money damages, issue an injunction, or provide some other type of relief?

   I asked the Court to award compensatory damages for lost wages, to enjoin APA from infringing on my FAA medical certificate rights and obligation, and to award punitive damages for acting completely outside APA statutory authority in violation of the RLA and for acting under color of law.

4. What legal claim or claims did you raise in the district court or at the BAP?

   APA's violation of its duty of fair representation, collusion with AA to violate rights under the Federal Aviation Act of 1958 and right to contract. Violation of 18 U.S. Code 242.

5. **Exhaustion of Administrative Remedies.** For prisoners, did you use up all administrative remedies for each claim before you filed your complaint in the district court? If you did not, please tell us why.

**PROCEEDINGS BEFORE THE COURT OF APPEALS.** In this section, we ask you about issues related to this case before the court of appeals and any previous cases you have had in this court.

6. What issues are you asking the court to review in this case? What do you think the district court or the BAP did wrong?

   The interpretation of the District Court of the federal regulation §61.53 and its determination that APA may develop an opinion respecting such regulation that infringes on my authority and obligation under the law including right to contract.

The District Court misinterpreted the law and gave APA authority to interpret and apply law exclusive to pilots and by doing so, the Court gave APA authority it does not have by statute or the law, whereby the law not only applies to AA pilots, but the more than 720 thousand pilots across the US.

APA's duty of fair representation failure in representing my personally and their violation of the RLA and misuse/abuse of the act.

APA's actions outside their statutory authority and subjecting APA to punitive damages.

APA's actions as state actors.

7. Did you present all issues listed in Question 6 to the district court or the BAP? Answer yes or no: YES

   If not, why not?

8. What law supports these issues on appeal? (You may refer to cases and statutes, but you are not required to do so.)

The Railway Labor Act, Federal Aviation Act of 1958, Federal Aviation Regulations, Article I, Section 10, Clause 1 of the Constitution, 18 U.S Code §1001, 49 U.S. Code §114 (g)(2), 18 U.S. Code Sec 242, 14 CFR §61.53, 14 CFR §117.5, 14 CFR Part 67, 14 CFR §91.11, 18 U.S Code §242, Security Directives (SD)1542-21-01 and 1544-21-01 §F3.

9. **Other Pending Cases.** Do you have any other cases pending in the court of appeals? If so, give the name and docket number of each case.

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case number 23-15249

10. **Previous Cases.** Have you filed any previous cases that the court of appeals has decided? If so, give the name and docket number of each case.

NO

**Bahig Saliba**

_____
Signature

[redacted]

June 26, 2023.
Date