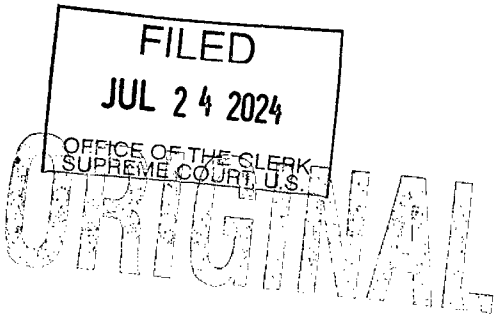
No. 24-191

In The

Supreme Court of the United States



BAHIG SALIBA,

Petitioner,

v.

ALLIED PILOTS ASSOCIATION

Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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Petitioner in pro se

QUESTIONS PRESENTED

Whether a collective bargaining agent has authority to negotiate terms and conditions that impact the Federal Aviation Administration (FAA) pilot medical certification standards, pilot authorities, and ability to secure a right to compensation created in the Federal Aviation Act of 1958 (The Act), and whether The Act gives the Petitioner a private right to action.

Whether by adopting and supporting the air carrier's demands for a medical treatment(s) or procedure(s) that directly impact the Petitioner's FAA medical certification standards, and by refusing to employ a defense strategy supported by authorities vested in the Petitioner by law during a grievance process, the Respondent abused protections afforded to it by the Supreme Court and the Railway Labor Act (RLA) and failed in its duty to fairly, in good faith, and without discrimination represent the Petitioner.

PARTIES TO THE PROCEEDING

Petitioner and Plaintiff-Appellant Below

Bahig Saliba, pro se litigant.

Respondent and Defendant-Appellee below

Allied Pilots Association (APA), a collective bargaining agent representing the pilots in the service of American Airlines Inc. (AA).

LIST OF PROCEEDINGS

Bahig Saliba v. Allied Pilots Association, No. 2:22-cv-01025-PHX-DLR, U.S. District Court for the District of Arizona.

- Judgement entered March 27, 2023.

Bahig Saliba v. Allied Pilots Association, No. 23-15631 United States Court of Appeals for the Ninth Circuit.

- Judgment entered April 30, 2024.

TABLE OF CONTNETS

INDEX OF APPENDICES

TABLE OF AUTHORITIES

CITED CASES

CITED CASES – Cont'd

CITED CASES – Cont'd

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A pages 32a to the petition.

The opinions of the United States district court appear at Appendix B pages 34a and 40a to the petition.

JURISDICTION

Judgement was entered April 30, 2024, by the Ninth Circuit court of appeals. No petition for rehearing was timely filed in the case.

Jurisdiction is found under *28 U.S.C.A. §1254(1)*

STATUTORY PROVISIONS/PUBLIC LAW

Federal Aviation Act of 1958 (The Act).

Title IV, Sec. 401 K (1) "Every air carrier shall maintain rates of compensation, maximum hours, and other working conditions and relations of all of its pilots and

copilots who are engaged in interstate air transportation withing the continental United States..."
and (5) "...and who is properly qualified to serve as, and hold a currently effective airman certificate authorizing him to serve as such pilot or copilot..."

Title III, Sec. 301 (b) "...Administrator shall have no pecuniary interest in or own any stock in or bonds of any aeronautical enterprise nor shall he engage in any other business, vocation, or employment."

Title VI Sec. 610 (a)(2), (3) and (5)
(a) It shall be unlawful–
(2) For any person to serve in any capacity as an airman in connection with any civil aircraft ... in air commerce without an
airman certificate authorizing him to serve in such capacity, or in violation of any term,
condition, or limitation thereof, or in violation of any order, rule, or regulation issued under this title.
(3) For any person to employ for service in connection with any civil aircraft used in air commerce an airman who does not have an airman certificate authorizing him to serve in the capacity for which he is employed,
(5) For any person to operate aircraft in air commerce in violation on any other rule, regulation, or certificate of the Administrator under this title.
Title X Sec. 1005 (e)
(e) It shall be the duty of every person subject to this Act, and its agents and employees, to observe and comply with any order, rule, regulation, or certificate issued by the Administrator or the Board under this Act affecting such person so long as the same shall remain in effect."

Railway Labor Act (RLA)

Sec. 2. In (4) and (5)
(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions.
(5) 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.

FEDERAL REGULATIONS

14 CFR Part 1
Definition of Administrator - means the Federal Aviation Administrator or any person to whom he has delegated his authority in the matter concerned.

14 CFR § 61.53 (a)
"...no person who holds a medical certificate issued under part 67 of this
chapter may act as pilot in command[1], or in any other capacity as a required pilot crewmember, while that person:

(1) Knows or has a reason to know of any medical condition that would make the person unable to meet the requirements for the medical certificate necessary for the pilot operation..."

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[1] 14 CFR § 1.1 defines Pilot in command as the person who (1) Has the final authority and responsible for the operation and safety of the flight. (2) Has been designated as pilot in command before or during the flight, and (3) Holds the appropriate category, class, and type rating, it appropriate, for the conduct of the flight.

14 CFR Part 67

Sets the standards for First-, Second-, or third-class pilot medical certificates and is devoid of any required medical treatment or procedure for setting the medical standards.

14 CFR §§ 91.3 and 91.11

91.3 – Responsibility and authority of the pilot in command. (a) The pilot in command of an aircraft is directly responsible for and is the final authority as to, the operation of that aircraft.

and

91.11 – No person may assault, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated.

14 CFR §117.5 (d)

(d) – As part of the dispatch or flight release, as applicable, each flight crewmember must affirmatively state he or she is fit for duty prior to commencing flight.

14 CFR §121.383 (a)(1)(2)(i)

(a) No certificate holder may use any person as an airman nor may any person serve as an airman unless that person–

(1) Holds an appropriate current airman certificate issued by the FAA;

(2) Has in his or her possession while engaged in operations under this part –

(i) Any required appropriate current airman and medical certificates.

TSA Security Directives SD1544-21-2 and SD1542-21-01

Exempting persons from wearing masks in §F3
(3) People for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or federal regulations.

U.S. CODE

18 U.S. Code §1001 (a)(1)(2)
(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact.
(2) makes any materially false, fictitious, or fraudulent statement or representation.

49 U.S. Code §114 (g)(2)
"The authority of the Administrator under this subsection shall not supersede the authority of any other department or agency of the Federal Government under law with respect to transportation or transportation-related matters, whether or not during a national emergency"

49 U.S. CODE §42112
See The Act Title IV, Sec. 401 K (1) thru (5). Passages from The Act coded under 49 U.S. Code.

STATEMENT OF THE CASE

The Petitioner is an airline Captain who provides transportation at American Airlines Inc., (AA). The Petitioner and AA are subject to PUBLIC LAW 85-726-Aug. 23, 1958, also known as the Federal Aviation Act of 1958 (The Act), the Railway Labor Act, (RLA), and 14 CFR Parts 1, 61, 67, 91, 117, and 121.

The Respondent, The Allied Pilots Association (APA), is the collective bargaining agent who represents the Petitioner. The APA's sole role, as detailed in The Act, Title IV Sec. K (3) and the RLA, is to negotiate for rates of pay, work rules, and working conditions. An FAA pilot medical certification and process are not within the mandate of the APA or the RLA.

The Act, in Title IV, Sec. 401(1) creates a pilot and copilot right to compensation by air carriers. Title IV, Sec. 401(5) requires that pilots and copilots are qualified, including medically certificated by the FAA, to serve in their capacity; thus, any mandate or interference that impairs or renders a pilot's FAA medical certification invalid, **attacks the right to compensation** (emphasis added). Arguably, the right demands a risk versus benefit assessment that must be reserved for the pilot, one of the reasons the FAA may not impose any medical treatment(s) or procedure(s) impairing a pilot medical certification standard.

The FAA is the single authority that sets separate and independent processes and standards for certification of pilots and air carriers. Neither The Act, the FAA, or the RLA grant AA or the APA authority or any role in the determination of pilot medical certification standards, the issuance or maintenance of such certification, and pilot

obligations or declarations. The process is restricted to the pilot, the FAA, and the FAA Aeromedical Examiner (AME), a physician authorized by the FAA who conducts the examination.

There is also no evidence of any Congressional intent to authorize the APA or AA to make determinations or assessments respecting FAA pilot medical certification standards, authorities, or the methods in which a pilot maintains such standards affecting the obligations under 14 CFR §61.53 and the declarations required under 14 CFR §117.5, or to negotiate any terms impacting such authorities or standards.

It is of great benefit at this point to provide a short narrative of the Public Policy process of the FAA pilot medical certification and authorities.

The FAA pilot medical certification is founded on self-disclosure where informed consent is bedrock. Neither The Act nor the FAA rules give the pilot authority that the pilot can then delegate to other persons in making health decision affecting the medical certification standard. In other words, the pilot obligations do not allow any other person, including the AME[2], to dictate any medical treatment or procedure, and the pilot duty is to prevent that occurrence. The decision for any medical treatment(s) or procedure(s), or any activity impacting the FAA medical standards, is strictly the pilots. The medical certification is inextricably tied to pilot legal obligations and rights.

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[2] The FAA does not and cannot prescribe any treatment or procedure other than what is required for an examination.

A pilot applicant makes declarations on FAA form 8500-8 under pains of 18 U.S. Code §1001. The pilot and AME then sign a Medical Certificate document indicating the applicant meets the FAA medical standards and sets the limitations and obligations. The pilot must continually meet said standards under §61.53 when exercising authority. In compliance with the standard, the rule in §61.53 creates a pilot obligation and ultimate authority in assessing fitness for duty. It states in part in (a) that:

> ***"...no person who holds a medical certificate issued under part 67 of this chapter may act as pilot in command[3], or in any other capacity as a required pilot crewmember, while that person:***
> ***(2) Knows or has a reason to know of any medical condition that would make the person unable to meet the requirements for the medical certificate necessary for the pilot operation..."***

The rule clearly vests the obligation and authority in the pilot who holds the medical certificate to make that determination. The rule is the legal interpretation that sets the bar for a pilot medical condition in planning, preparation, and for the entire time a pilot is assigned duty or is operating an aircraft. In other words, compliance with the medical standards does not begin at the flight deck door, as the lower Court inferred in its

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[3] 14 CFR § 1.1 defines Pilot in command as the person who (1) Has the final authority and responsible for the operation and safety of the flight. (2) Has been designated as pilot in command before or during the flight, and (3) Holds the appropriate category, class, and type rating, it appropriate, for the conduct of the flight.

ruling, and pilots must use their personal knowledge to make that determination.

For example, pilots are warned not to engage in scuba diving, blood donation, or consuming alcohol or over the counter drugs when planning on operating aircraft, or when they know or have a reason to know the effects of any activity that would impair their condition and create a deficiency, including the simple consumption of a meal. The decision is reserved for the pilot.

During the announced pandemic in early 2020, AA implemented, and the APA adopted a purported "non-opposing" position to the airline's implementation of a mandatory policy of restricting a pilot's breathing by covering the nose and mouth while on duty.

The FAA did not regulate such practice; thus, a pilot who restricts his breathing in any way while performing duty is in legal no-man's land. There has never been any FAA legal guidance or assurances that the pilot who chooses to restrict breathing is complying with the FAA medical standards under §61.53[4].

Accordingly, during that time, the Transportation Security Administration (TSA) issued an exemption in their Security Directives SD1544-21-02, aircraft, and SD1542-21-01, airport operators' series of mask orders in §F3 that conforms to pilot authority. It exempts

> ***"People for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant***

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[4] As a reminder, and it is required to remain attached to the medical certificate, the rule is printed on the document.

> ***workplace safety guidelines or federal regulations."***

The exemption in §F3 also conformed to 49 U.S. Code §114 (g)(2) where

> ***"The authority of the Administrator under this subsection shall not supersede the authority of any other department or agency of the Federal Government under law with respect to transportation or transportation-related matters, whether or not during a national emergency."***

The "non-opposing" position adopted by the APA, which remains a position held today, in support of mandatory restriction of pilot breathing was not codified in any agreement by following §156 of the RLA.

The APA supported their legal argument by relying on an FAA publication titled Safety Alert for Operators or (SAFO20009). The SAFO20009 is advisory in nature and not regulatory or legally binding. It states:

> ***"A SAFO contains important safety information and may include recommended action. Besides the specific action recommended in a SAFO, an alternative action may be as effective in addressing the safety issue named in the SAFO. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies."***

By adopting a position supporting AA's mandatory policy very early on, the APA not only exceeded their mandate by superseding the pilot authority, but it locked itself in the non-opposing position and did not deviate. The APA was operating outside its mandate to negotiate for rates of pay, work rules, and working conditions where the authority of a pilot is not negotiable. The position directed and shaped the APA actions going forward in the representational process in this case.

For example, on March 25, 2021, the APA signed a Letter of Agreement with AA (LOA-21-002). The LOA-21-002 was not part of this case but highlights a pattern of behavior of invading Public Policy and pilot authority that is detrimental to aviation safety. LOA-21-002, which was not voted on by the membership[5], incentivized medical treatments for pilots. This event is of critical importance because on April 19, 2021, the FAA paused the J&J product for blood clotting and did not reauthorize it until December 23, 2022. The pilot group was not informed of the pause by AA, and to the best of the Petitioner's knowledge, neither did the APA. It is important to note that airline pilots rely almost exclusively on information flow and guidance from the airline flight department. A person could reasonably conclude, since the product required a single shot, that many pilots took the unauthorized drug invalidating their medical and continue to operate aircraft at AA today.

Financially incentivizing decision-making by pilots, as later discussed, is in contradiction to Congressional intent. Also, Invading Public Policy can be detrimental.

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[5] The APA leadership favored and prompted pilots to cover their nose and mouth and the uptake of the medical treatment by pilots.

In August of 2023, as evidence of contradiction and in a reversal to its position respecting LOA-21-002, the APA reached a new agreement with AA, voted on by the pilots, containing a provision that denies AA the right to demand any medical procedure(s) not required by the FAA[6] for a First-Class pilot medical certification.

The new agreement is a good indicator and highlights AA pilots' displeasure with the APA's prior position. However, the new agreement created new "qualifications" for pilots that are non-existent or addressed by the FAA. The new qualifications segregated pilots who accepted the medical treatment from those who did not in contravention to 14 CFR §121.383 (a)(2)(i)[7], denying certain pilots their full right under The Act. To a detriment, the APA manipulated and invaded Public Policy and pilot rights.

In the meantime, pilots who refused the AA mandatory policy of restricting their breathing were disciplined outside the Collective Bargaining Agreement (CBA) grievance process at first. After some pilots raised objections to the discipline, the APA, once again in agreement with AA and in violation of pilot authority, invoked the CBA grievance process

AA, in coordination with the APA, disciplined pilots who exercised their authority. In short, the APA made a determination of health reserved for pilots, did not enter into an agreement with AA by following §156 of the RLA,

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[6] As noted, the FAA does not require any medical treatment or procedure for certification.

[7] §121.383 (a)(2)(i) requires airlines to use only FAA certificated pilots. By demanding all pilots accept the medical treatment the airline created a distinct and an airline-specific medical standard.

used the grievance process to force compliance by the pilots overstepping their authority, and violated a pilot right created in The Act.

The Petitioner rejected all of AA's policies that impacted his FAA medical standard in any way, including that of mandatory breathing restriction while on duty. As a result, he was suspended and subjected to the disciplinary process outlined in the CBA resulting in his full suspension without pay or benefits.

The APA refused to employ the one valid legal defense the Petitioner needed in support of his authority as outlined in the law. The APA claimed that the strategy was not "legally sound" while at the same time not offering any defense strategy in the run up to the disciplinary hearing, even when the Petitioner requested the full APA representation.

The APA claimed, and the Lower Court agreed in a play on semantics, that the Petitioner did not "affirmatively" request the APA representation. To affirmatively express approval or agreement, a competent person, and it would be irrational otherwise, must have a good understanding of the defense and process; thus, a reasonable person would conclude that, while the APA has the obligation to represent the Petitioner in good faith, the Petitioner has the right to learn of the strategy and the APA did not have or provide any. The APA built an insurmountable obstacle expecting the Petitioner to capitulate to their irrational position, a position they adopted in favor of AA.

Although the APA holds no authority, and the rule only authorizes the pilot to make the ultimate determination of physical and mental fitness in

preparation to operate aircraft, the APA lawyer, Rupa Baskaran, relying on SAFO20009 in support of the APA position made the unequivocal statement that the

> ***"...APA does not agree with your position that the Company's mask policy violates FAR 61.53, nor does it agree the Company's mask policy is in violation of your rights in any way..."***

The statement made by Baskaran is the ***"smoking gun"*** in this case (emphasis added). By adopting that position well before the need for any representation, the APA had already sealed the fate of the outcome of any grievance for the Petitioner and all the represented pilots and attacked the Petitioner's right in The Act.

There was nowhere to go, and the APA could not, even if it desired, and it did not, fairly represent the Petitioner. The APA handicapped the process by trading a critical, and the only legally sound defense, in favor of its arbitrary and irrational support of a mandated policy created by AA, a policy that created a deficiency not addressed or regulated by the FAA medical standards.

In adopting a negotiating position favoring AA's mandatory policy that violates the rights, legal obligations, and authority of the Petitioner, the APA discriminated against the Petitioner and violated the law.

The APA did not, nor it could in good faith, having adopted the airline policy and advocated for it very early on, argue against it in a grievance process. The APA arbitrarily and unlawfully adopted a position of authority and based every action on a decision made under that false authority.

The APA was not engaged in collective bargaining but rather in collective punishment. Every pilot who rejected covering the nose and mouth went through the grievance process and received a letter in their employee file threatening termination, no exceptions. The APA turned the representation process on its head for all pilots.

As discussed earlier, under the federal aviation rules and regulations, §61.53 gives the ultimate authority and obligation to the person about to operate an aircraft.

Contrary to the District Court's opinion, this evaluation is conducted by the pilot at all times, from the moment the pilot intends on operating an aircraft to the moment the aircraft comes to a complete stop.

The rule in §61.53 became the central point of contention and the cornerstone in the lower Court's ruling. Using its discretion, without providing any legal or lawful support, the Court opined that the Petitioner's

> ***"...interpretation of FAR §61.53 is idiosyncratic and almost certainly incorrect. That regulation provides, in relevant part;"***

that

> ***"...no person who holds a medical certificate issued under part 67 of this chapter may act as pilot in command, or in any other capacity as a required crewmember while that person (1) Knows or has a reason to know of any medical condition that would make the person unable to meet the requirements for***

> ***the medical certificate necessary for the pilot operation..."***

and

> ***"...Nothing in this section even arguably gives Saliba the unilateral authority to decide..."***

The Petitioner believes the Court abused its discretion. While the Court's premise is almost certainly correct when applied to alcohol consumption, blood donation, or scuba diving for example, or any activity that would create a deficiency that has been identified[8] and addressed by the FAA, and the FAA did not regulate breathing restriction, it is well within the authority and obligation of the Petitioner to determine the practice is in violation of the medical standards; therefore, the more accurate premise is that the rule gives the pilot the **ultimate** authority in that determination.

The rule very clearly communicates that authority to the person who is to operate the aircraft and relies on the person's knowledge for that determination. There simply is no other choice, the person who is about to operate the aircraft must make that ultimate decision. It is incontrovertible that any decision that negatively affects the pilot's medical certification directly impacts the right to compensation; thus, it must be the pilot's decision.

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[8] It is impractical if not impossible for the FAA to identify all medications or activities including food consumption that would create a deficiency; therefore, the ultimate authority must be given to pilots with FAA guidance. Nevertheless, the pilot must comply with §61.53.

There is no conceivable way that the FAA could regulate every activity a person may be engaged in, even down to consuming a simple meal; therefore, and logically, it relies on the pilot to make such a determination. This is not limited to breathing restriction but applies to all or any future imposition or demands.

The Court missed the point entirely even after a very detailed explanation in the motion for reconsideration. It is worth repeating, contrary to the Court's opinion, compliance with the rule does not begin at the flight deck door. A pilot does not suddenly meet the medical standards at the flight deck door or is only obligated to meet the standard at that moment. The misunderstanding by the lower Court of aviation law and who is authorized to make such decisions turned to abuse of discretion by the Court following the motion for reconsideration which provided extensive education.

We can go a step further and conclude that, even if a practice is authorized by the FAA, and restricting breathing is not because it creates a deficiency, in combination, and in addition to the need for the risk versus benefit evaluation reserved for pilots respecting their right to compensation as discussed above, rules 14 CFR §§1.1 and 91.3 give the pilot administrative and ultimate authority in making that determination.

Not following the rule as written would spell the collapse of the medical certification process. An interpretation of the rule whether by the APA or the Court, may not usurp the pilot's authority as clearly stated below,

> ***"14 CFR §1.1...Administrator means the Federal Aviation Administrator or any***

> ***person to whom he has delegated his authority in the matter concerned."***

and

> ***"14 CFR §91.3 Responsibility and authority of the pilot in command. (a) The pilot in command of an aircraft is directly responsible for and is the final authority as to, the operation of that aircraft.***

A pilot medical condition is very much a part of aircraft operation, and "final authority" unequivocally means "ultimate" authority. The APA cannot supersede the authority of the pilot as it did in their determination and actions. Arguing in favor of the pilot's authority in §61.53 is the only, rational, and legally sound argument, anything else is interference in pilot authority and an attack on a pilot right. The APA and the lower Courts' opinions are in error.

The Court, without expert testimony or FAA interpretation, or even when it could not with certainty declare the Petitioner application of the rule is incorrect, while in contradiction, supported what it deemed a definitive, correct, and lawful APA position. The rules are not intended to allow anyone to interfere in the standard or deprive or interfere in the pilot authority.

The District Court also opined that AA's policy,

> ***"... was based on a scientific consensus that wearing masks helps reduce the transmission of COVID-19. Saliba might disagree with the science, but his disagreement does not make APA's***

> ***endorsement of American's mask policy arbitrary, discriminatory, or in bad faith."***

Quite the contrary. Operating aircraft is not done by consensus, otherwise there would not be authority vested in a Pilot in Command (PIC) and the FAA would have certainly regulated the practice for pilots based on the consensus of other agencies which is not supported by Congressional will as written in The Act.

The Act is clear in that respect in Title III, Sec. 301(a) where it states:

> ***"In the exercise of his duties and the discharge of his responsibilities under this Act, the Administrator shall not submit his decisions for the approval of, nor be bound by the decisions or recommendations of, any committee, board, or other organization created by Executive order."***

As stated above, the pilot has administrative power under §§1.1 and 91.3; therefore, the authority rests with the Petitioner. The opinion of the District Court is in contradiction to Congressional will and the federal rules, and it was an error to rely on it as the cornerstone in determining that the APA was within their mandate to negotiate based on their interpretation of §61.53. It is inconceivable that APA's adopted position is within the bounds of their mandate.

There simply was not a disagreement between the Petitioner and the Respondent as the Court opined. The APA exercised authority it does not have in interference with the exercise of authority by someone who does. This is a violation of aviation law, not a disagreement; thus,

the APA not only arbitrarily adopted a position supporting AA but also interfered in the Petitioner's duty and authority impairing his ability to claim a right created in The Act. The APA was no longer acting as an agent of the Petitioner.

In the response to a motion for reconsideration, the Court proclaimed the Petitioner was "quarrelling with the Court" and still, without providing the law in support of its ruling, denied the motion based on its own interpretation of §61.53 in support of the APA's purported wide range of reasonableness.

The Supreme Court and the RLA afford A pilot union protections giving it the latitude to negotiate. Not having the latitude or the wide range of reasonableness impairs the grievance process. However, the question that is present at all times is, how wide of a latitude does a pilot union get?

In this case, there is a right, a clear Public Policy, and authorities vested in pilots in the exercise of their duties. A pilot union is not party to and is not authorized to make any determinations that impair the right, authority, or duty of the pilot; therefore, the APA's position is well outside their mandate, is unreasonable, and irrational.

The APA created a crossroad of the RLA and The Act at the worst possible intersecting point, and by siding with the airline, it interfered in crewmember duties in violation of 14 CFR §91.11 and impaired its duty to be impartial or even fair and not discriminatory.

Lastly, interfering in crewmember duties is a serious offense. In *Adm'r v. Siegel* NTSB Order No. EA-

3804 (Feb. 10, 1993), 1993 WL 56200, the FAA successfully invoked 14 CFR §91.11 to assess a civil penalty against a pilot who walked up to a helicopter that was on the ground preparing for takeoff, reached into the helicopter and physically assaulted the pilot. The FAA continues,

> ***"...accordingly, the rule and prior FAA interpretation, as evidenced by the Siegel case, support a finding that an individual does not need to be on board the aircraft to violate §91.11."***

The APA needed not be on the aircraft to violate this rule when interfering in crewmember duties. An AA policy that interferes in pilot medical standards that is supported by the APA is interference in crewmember duties and a violation of §91.11 by the APA. A violation of §91.11 is an invasion of Public Policy by the APA and interference in the pilot authority which resulted in harm to the Petitioner when denied his right to compensation.

The APA has acted arbitrarily, discriminatorily, and well outside its mandate and failed to be fair. It interfered in pilot authority, it acted well outside the bounds of reasonableness, and attacked a right of the Petitioner resulting in the denial of that right.

Original jurisdiction in the case under 28 U.S. Code 1331, federal question.

REASONS FOR GRANTING THIS PETITION

This case is novel and of national prominence. It is about The Act and federal aviation rules and regulations that create obligations and authorities exercised by pilots and copilots. It is about securing the integrity of the process of FAA pilot medical certification which, if and when compromised, poses a great threat to safety of flight. This case is certainly not entirely about the Petitioner but is about a nation of laws.

There are several main reasons for this Court to grant this petition, all of which are rooted in the law, where aviation safety, which was noted 47 times in The Act, is the central theme.

REASON 1- RIGHT TO COMPENSATION

This case is about the APA directly attacking the Petitioner's right to compensation by interfering in his authority and impeding his ability to perform duties and obligations, and then sweeping their violation of his right and authority under the guise of the RLA grievance process to avoid the implication of their violation.

The right demands a risk versus benefit assessment that the APA is well outside its mandate to determine, or in that respect, develop any legal opinion impacting the right and authority. The APA admission in their smoking gun statement illustrates the indifference of the APA to the rights of the Petitioner.

Their actions speak even louder when adopting an AA policy that coerced and superseded the authority of

the Petitioner. The APA willfully and irrationally took steps to attack and violate the right of the Petitioner.

REASON 2- VIOLATION OF FEDERAL REGULATION

As discussed above, the APA violated federal regulations and interfered in the Petitioner's performance of duty. The violation itself is a matter for the FAA to pursue; however, without FAA authority to recover compensation as a result of the violation, the Petitioner is left with the only correct path, a private right to action.

Recognizing this fact, The Fifth Circuit Court in *Laughlin v. Riddle Aviation Co.,* 205 F.2d 948 (5th Cir. 1953) ruled that:

> ***"In prescribing 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."***

Also

> ***"...As long as Marbury v. Madison...it is a general an 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,* it was recognized that:

> ***"A legal right without a remedy would be an anomaly in the law."***

While In *De Lima v. Bidwell*, it was said:

> ***"If there be an admitted wrong, the courts will look far to supply an adequate remedy."***

The interference by the Respondents cannot be addressed under the RLA, or by other agencies. A remedy in this case may not be found in the grievance process for violations by the Respondents or for the refusal to violate Public Policy by the Petitioner, it is a matter of law.

In *Norris v. Hawaiian*, citing *Maher*, 125 N.J.at 474, 593 A.2d at 760 the Hawaii Supreme Court ruled

> ***"[A]rbitration is a continuation of the collective bargaining process," and the arbitrator "ordinarily cannot consider public interest and does not determine violations of law or public policy."***

That puts us squarely in *Laughlin* where the court cited *T.& P. Ry. Co. v. Rigsby* stating

> ***"A disregard of the command of a statute is a wrongful act, and where it results in damage to one of the class for whose especial benefit the statute was enacted, the right to recover the damages from the party in default is implied."***

The court went on

> ***"...The implications and intendments of a statute are as effective as the express provisions."***

Which leads right into the third reason.

REASON 3- A SPLIT IN THE APPELATE COURTS

The record shows a split in the appellate courts respecting private right to action under federal aviation law violation. The District Court and the Ninth Circuit, in a split with the Fifth Circuit, were steadfast in their opinion there is no private right to action under the Act. The Petitioner believes the Fifth Circuit ruling is as valid today as it was in 1953 and the lower courts are in error.

The Act gives the Petitioner an implied private right to action in this case to protect a right. A suppression of authority vested in pilots and copilots by the APA, the District Court, and the Ninth Circuit, concurrently with AA, while simultaneously denying the Petitioner remedy in all venues, is a threat to aviation safety and a denial of a right created in law.

REASON 4- INVADING PUBLIC POLICY

This case is about invading Public Policy negatively impacting the ability of pilots and copilots to comply with rules, regulations, and their legal obligations in the performance of their duties. This is a major threat to aviation safety. Congress understood the critical nature of aviation safety when writing the law. Accordingly, it made every effort to keep decisions affecting safety of flight unadulterated.

Title III, Sec. 301(b) of The Act dictates that the

> ***"...Administrator shall have no pecuniary interest in or own any stock in or bonds of any aeronautical enterprise nor shall he***

> ***engage in any other business, vocation, or employment."***

The Congressional intent here is clearly to eliminate any influence or interference, pecuniary in nature, in the Administrator's decision-making process that may adversely affect safety of flight.

In Title IV Sec. 401 (K)(1), The Act created rights for pilots and copilots, and further in §(K)(3) a provision ensured The Act does not impede their right to collective bargaining to improve such right.

> ***(K)(1) "Every air carrier shall maintain rates of compensation, maximum hours and other working conditions and relations of all its pilots and copilots who are engaged in interstate air transportation..." and in K (3) "Nothing herein contained shall be construed as restricting the right of any such pilots and copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of pay of compensation or more favorable working conditions or relations."***

A reasonable person can infer that Congress, by securing a right to compensation for pilots and copilots, and preserving their right to collective bargaining, intended on preventing influences and interference, such as incentivizing a medical procedure(s) or treatment(s), or coercion under threat of termination, to be accepted and complied with by pilots. Such actions violate informed consent and adversely impact the pilot decision-making process affecting safety of flight. As discussed, §§1.1 and

91.3 give a pilot administrator power; thus, Title III, Sec. 301(b) of The Act is as applicable to pilots.

What Congress did not foresee is an airline, in cooperation with a pilot union, using the coercive threat of losing a pilot and copilot Congress created right, as the stick to induce an action that violates the rule of law in contravention to their intent.

REASON 5- EXEEDING A MANDATE

This case is about a freely negotiating bargaining agent that strayed far beyond the bounds and protections afforded to it by this Court and the RLA that must be corralled within the boundaries of Congressional intent.

It's a case about the APA acting arbitrarily, discriminatorily, and in bad faith and failing their duty of fair representation. This case is ripe for the deployment of the justice system of the United States at its highest levels.

This case deals directly with two Public Policies that have the Congressional intent of keeping separate; The RLA and The Act, however, as a result of actions taken by the Respondent, converged at the most undesirable intersection, that of the FAA pilot medical certification standards, in which informed consent is bedrock, and authorities, and that of financial interests.

The Respondent's actions were well outside its mandate, have contravened Congressional intent, and attacked the Petitioner's right to compensation by interfering in his FAA medical certification standards in order to coerce a decision of violation. The result is the denial of his right to compensation by AA. Remedy for

such a violation must be found in a court of law and more accurately in The Act.

A remedy must not be denied or become illusive and a return to the intent in the law is required. A deep dive into the Congressional intent of the RLA and The Act will provide evidence that the Respondent exceeded authority vested in them under the RLA and violated the Petitioner's right and authorities vested in him in the law. By doing so, the Respondent exceeded its mandate and failed to represent the Petitioner fairly, in good faith, and without discrimination and must be held liable for damages to his right to compensation.

IN CONCLUSION

Rights created in The Act and authorities vested in pilots and copilots are the backbone of a system that has for decades provided a safe transportation system to the public. Interfering in pilot authority or denying a pilot a right in favor of achieving a corporate expedient financial recovery undermines safety in aviation in contradiction to Congressional intent.

Allowing a collective bargaining agent to operate openly and freely well outside their mandate in an invasion of Public Policy and the rights of pilots to accommodate the wishes of the corporation is a determent to safety and a violation of its mandate and the law. Where a right created is attacked, a remedy must be found.

The meaning of the words written in the law when passed do not change over time. Adopting such a drastic change in this case will create a hazard to aviation and continued subversion of pilot authority.

The Petitioner, an airline Captain with almost 40 years of experience, comes as pro se and respectfully asks the Court to issue a writ of certiorari.

———— Oral argument requested. ————

Respectfully submitted,

/s/ Bahig Saliba

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