No. 24-194

In The

Supreme Court of the United States

BAHIG SALIBA,

Petitioner,

v.

AMERICAN AIRLINES, Inc. et, al.,

Respondents.

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 the Respondent's demands for a medical treatment(s) or procedure(s) that are not required, authorized, or regulated by the Federal Aviation Administration (FAA), that directly impact the pilot medical certification standards and process, violated a right created in the law, interfered and impaired the Petitioner's ability to perform his duties, fulfil his obligations, and to make declarations reserved for the Petitioner, and whether the Federal Aviation Act of 1958 (The Act) gives him an implied private right to action to recover compensation owed to him by the air carrier.

Whether the above demands by the air carrier violate the terms and conditions of an employment contract under which the Petitioner has an obligation to provide a valid First-Class FAA medical certificate that meets FAA medical certification standards at set intervals.

LIST OF PARTIES

Petitioner and Plaintiff-Appellant Below

Bahig Saliba, pro se litigant.

Respondents and Defendants-Appellees below

- American Airlines Inc.,
- Chip Long,
- Timothy Raynor, and
- Alison Devereux-Naumann,

Individual respondents are management pilots themselves and party to this action in the trial court.

LIST OF PROCEEDINGS

Bahig Saliba v. American Airlines Inc., et al., No. 22-cv-00738-PHX-SPL, U.S. District Court for the District of Arizona.

- Judgement entered January 27, 2023.

Bahig Saliba v. American Airlines Inc., et al., No. 23-15249 United States Court of Appeals for the Ninth Circuit.

- Judgment entered April 30, 2024.

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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 29a thru 30a to the petition.

The opinion of the United States district court appears at Appendix B pages 42a and 48a 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..."

14 CFR Part 67

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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.

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 is engaged in air transportation and is subject to The Act and 14 CFR Parts 1, 61, 67, 91, 117, and 121.

The Respondents are an air carrier and high-level manager pilots operating under a Certificate of Convenience and Necessity issued under Public Policy. They are subject to, in addition to State contract law, The Act and the above CFRs.

The FAA is the single entity authorized by The Act to set separate and independent processes and standards for certification of pilots and air carriers. Neither The Act nor the FAA, and there is no evidence of Congressional intent, grant the air carrier authority in the determination of pilot medical standards, or any role in the process of issuance or maintenance of such certification and pilot obligations or declarations when providing transportation to the public.

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 Petitioner secured an at-will employment contract for which improved rates of pay, work rules, and working conditions terms are detailed in a Collective Bargaining Agreement (CBA). The Petitioner's obligation, which is not a term or provision in the CBA, but detailed in the Respondents' employee manual, is that he has the responsibility to maintain and provide a valid First-Class[2] FAA medical certificate at set intervals. The Petitioner must meet his lawful and legal employment obligations by exercising authority under the medical certification process.

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

The pilot medical certification, a Public Policy that has been in effect for decades, is founded on self-declaration where informed consent is bedrock. The process is strictly carried out between the FAA Aeromedical Examiner (AME), a physician authorized by the FAA who conducts the examination, and the pilot applicant.

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 has the obligation and duty, for safety reason, not to allow any other person, including the AME, to dictate any medical treatment or procedure in the performance of his job duties and must follow strict protocols laid out by the FAA. In short, the decision for any medical treatment(s)

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[2] Airline pilots may operate as copilots by holding a Second-class medical certificate.

or procedure(s), or any activity impacting the FAA medical standards is strictly pilot authority that cannot be superseded under the law.

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 of the pilot. The pilot must continually meet said standards under 14 CFR §61.53 when exercising authority. The rule in §61.53 creates pilot obligations and gives the ultimate authority, based on acquired knowledge, in assessing fitness for duty and compliance with the standard to the pilot. 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 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.

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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.

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 that the effects of any activity would impair their condition, down to the consumption of a meal.

Accordingly, and to eliminate any deficiency, during the announced pandemic, 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 for

> ***"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."***

The exemption conforms to the pilot authority and 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."***

Compliance with the FAA medical standards is not optional. The Act is very clear in 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."***

Additionally, Title VI Sec. 610 (a)(2), (3) and (5) of The Act requires in:

> ***(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,***

and in

> ***(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.***

Also, when performing duty, and before conducting every flight, an airline pilot must make fit-for-duty declarations as required in 14 CFR §117.5. The declaration is an interest held by, in addition to the reader

of this document and every passenger, the FAA, or the agent of the people. The declaration is also subject to 18 U.S. Code §1001. At no point during the process is the air carrier authorized by the FAA to make any such declarations. Any coerced medical procedure(s) or treatment(s) invalidates such declaration as it also does for the medical certification process, for coercion and informed consent do not coexist.

Considering the detailed FAA pilot medical certification process above, one would argue, an act of coercion to accept a medical treatment(s) or procedure(s), or any activity that impacts or impairs the FAA medical standards, followed by a fit-for-duty declaration as required by law, and operating aircraft for profit, borders on extortion by an air carrier.

Simply put, the FAA merely set the requirements demanded in The Act; therefore, pilot compliance with the FAA medical standards and obligations is rooted in The Act, and for the air carrier, it is the interference free acceptance of the FAA pilot medical certification standards and a duty to maintain compensation of said pilots who provide transportation. This is the law.

These mutual obligations themselves, which have been practiced for decades, transposed in a provision of the Respondent's employee manual by which the Respondents acknowledged their obligation of non-interference.

With the advent and as a result of the announced pandemic in late 2019, American Airlines (AA), under the coercive threat of termination, demanded that pilots comply with new procedures of restricting their breathing and that of accepting a medical treatment for continued

employment. The procedures are in contravention to the FAA medical standards, rules, and process. Informed consent was of no consequence to the Respondents.

The Petitioner viewed the Respondents' coercive demands as a threat to flight safety, a violation of the employment contract, an attack on his right and authority, and a violation of 14 CFR §91.11 which states:

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

In compliance with his duty, the Petitioner rejected all of AA's demands.

Regardless of what is written in the employee manual, it defies logic that an employer would tie the employee's hands behind their back and expect them to fulfill their obligation. Such an employer would naturally be in violation of the employment contract or agreement. Notwithstanding the FAA pilot medical requirement, impairing the required medical standard is equivalent to tying someone's hands behind their back and expecting compliance with obligations. It is akin to impairing the vision of the reader of this document and expecting performance by a certain deadline.

A reasonable person would rationally conclude that it is the Respondents' obligation not to impair or interfere in the Petitioner's medical standard or tie his hands behind his back. A reasonable person would also conclude that, even if not written, and it is, the obligations are mutual and constitute a contractual provision in an

employment contract. There is, however, as written, a contract of mutual obligations.

As a result of his rejection, the Respondents disciplined the Petitioner and placed him in administrative leave status denying him his right to compensation at the full benefits level of rights created in the CBA, and subsequently placed him in unpaid administrative leave as of August 19, 2022, depriving him of his full right to compensation and to all the terms and provisions of the CBA, including other benefits such as medical coverage and retirement contributions.

The Respondents have the right to terminate the employment relationship but hey have not, and they have no reason to. The Respondents have kept the Petitioner on unpaid leave and in administrative limbo for almost two years. The Respondents are abusing the law to extract compliance in violation of FAA rules and regulations. The Respondents have threatened, intimidated, and interfered in the performance of the Petitioner's duties and denied him his right to compensation. A violation of The Act.

The FAA takes a dim view of safety breaches and rule violations. 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."

Coercing an acceptance of a medical treatment or procedure under threat of termination that compromise a pilot's medical standard is a violation of rule §91.11.

The Respondents interfered in the qualification of the Petitioner rendering him unable to provide transportation under their terms. The Petitioner refused to allow interference, or the usurpation of his authority, as dutifully required by law. The air carrier then skirted its duty to maintain rates of compensation and placed the Petitioner on unpaid status without termination. The aviation law violation itself is a matter for FAA administrative action, but it has been made a practice by the Respondents to deny rights created in The Act as the stick to achieve an objective in violation of The Act and aviation law and to usurp the Petitioner's authority. This flies in the face of Congressional intent.

The Act gives the FAA Administrator authority to conduct investigations, take administrative action and levy fines against violators of the rules created by the agency, however, it does not give the Administrator authority to recover compensation owed to pilots and copilots. In this case, the Petitioner's refusal is not a violation and there is no administrative action to take or administrative authority to recover compensation.

Recognizing this fact, the Fifth Circuit Court in *Laughlin v. Riddle Aviation Co.*, 205 F.2d 948 (5th Cir. 1953) correctly 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."***

Pilot right to compensation itself is not created or is subject to collective bargaining under The Railway Labor Act (RLA). Collective bargaining simply improves the right. The ability to exercise this right by the Petitioner and the interference by the Respondents cannot be addressed, and a remedy in this case may not be found in the RLA grievance process. It is a matter of law and Public Policy.

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."***

The grievance process addresses contractual rights disputes created in the CBA. The pilot and copilot rights are a matter of law. That puts us back 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."***

The District Court and the Ninth Circuit, however, in a split with the Fifth Circuit, were steadfast in their opinion there is no private right to action for aviation law violation.

The meaning of the words written in the law when passed do not change over time. In this case, allowing such a change will present a hazard to aviation. The Petitioner believes the Fifth Circuit ruling is as valid today as when it was written in 1953 and that the lower

courts have erred. The Act gives the Petitioner an implied private right to action under the conditions of this case.

THE EMPLOYMENT CONTRACT CLAIM

The claim of employment contract violation met the same fate. A split with the Arizona Supreme Court, en banc ruling in *Leikvold v. Valley View Community Hosp.*

The District Court declined to rule on the contract; however, it ruled that there is only one obligation and that it was the Petitioner's to provide a First-class FAA medical.

In *Leikvold,* the court agreed with the Plaintiff in that

> ***"...if an employer does choose to issue a policy statement, in a manual or otherwise, and, by its language or by the employer's actions, encourages reliance thereon, the employer cannot be free to only selectively abide by it. Having announced a policy, the employer may not treat it as illusory."***

As discussed, a reasonable person would conclude that the Respondents are subject to an obligation of non-interference in the Petitioner's maintenance of an FAA medical standard that has been clearly expressed by the statements in the manual. Notwithstanding the certificate requirement by the FAA rules and regulations, the practice had been for decades that the Respondents accepted, ***without interference*** (emphasis added), the FAA medical certificate presented by the Petitioner and the Petitioner relied on the practice thereof. The

Respondents cannot suddenly impair the standard and authority and expect compliance by the Petitioner.

The District Court and the Ninth Circuit also disregarded the fact that, not only did the Respondents depart from historical practice and statements made in the manual and its intent, but also imposed conditions in violation of the terms of employment and the law when they interfered, in violation of Public Policy and in the Petitioner's responsibility and authority. Additionally, their demand was for an entirely different and distinct medical certification standard that is not FAA approved or authorized in 14 CFR Part 67 and a violation of the process that the Petitioner was not willing to violate or accept.

In short, the Respondents' coercive imposition created a distinct medical standard that is not compliant with 14 CFR Part 67 standards and deviated from the historical practice of accepting the FAA medical certification and standards which was always relied on by the Petitioner to be required and had been accepted by the Respondents on its face for decades.

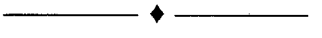
An FAA medical certificate does not magically appear, it is not something acquired through purchase, it demands dedication and very close attention to everything a pilot is engaged in that affects the health of a person and it is very personal.

The District Court's observation in its ruling that a medical certificate is required by regulation anyway and that the Petitioner had missed the point is irrational and moot. Notwithstanding the law, the Respondents made it a statement in their manual and demanded a First-Class FAA medical when in fact, some pilots can operate

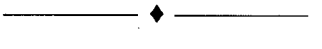
aircraft with a lower standard such as a Second-Class FAA medical certificate. The Court's ruling did not rely on any expert witness testimony or an understanding of how authorities are exercised. The Petitioner himself is an expert in the field after 40 years of applying aviation law.

The Respondents' demand was for an airline specific medical standard which does not exist in the law, and, considering the legal requirement, no reasonable person would expect the Petitioner to be able to comply with the obligation when the Respondents coerced the Petitioner to accept a medical treatment under threat of termination invalidating the medical certification process and standard. A violation of obligations by the Respondents occurred.

The Respondents took the liberty of creating their own medical standard and the Petitioner had the duty to reject such standard. The Respondents violated the employment contract and denied the Petitioner rights created in The Act



This case was heard under the jurisdiction of 28 U.S. Code §1331, federal question.



REASONS FOR GRANTING THE PETITION

This case is about the subversion of pilot authority by using the coercive threat of termination that attacks a right created by Congress. The exercise of pilot authorities is central to the safety of the traveling public as intended in The Act. Our nation cannot afford to abandon laws that have kept people safe in favor of financial incentive or expedient recovery by adopting corporate practices that undermine the very law that gives them the authority to operate aircraft in the national airspace.

There are several reasons that are rooted in the law for the Court's consideration, but the overarching reason, for all practical purposes, is the safety of the flying public. Preserving Public Policy, contractual obligations, and pilot authority preserves public safety.

REASON 1 – A TWO PRONG VIOLATION OF AVIAITON LAW

First Prong - 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 for collective bargaining to improve such rights.

> ***(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 for pilot compensation, intended on preventing influences and interference that may adversely impact the pilot decision-making process adversely affecting safety of flight. One can also conclude that §§1.1 and 91.1 combined, as discussed below, subjects the pilots to the same duty as the FAA administrator.

Additionally, by entering into an agreement with the pilot union that incentivized medical treatments for pilots, the Respondents undermined and contradicted the very Congressional intent of maintaining an unadulterated decision-making process to safeguard aviation safety.

Congress, however, could have never imagined that a right they created would be used as the weapon to subvert the process of FAA pilot medical certification and pilot authority. Coercive threat of termination and informed consent cannot coexist, but the Respondents defied the intent and the will of Congress and destroyed informed consent for the majority of pilots under the threat of losing a right created by Congress.

The Respondents attacked that right to coerce the Petitioner to violate the rules and regulations and to subvert the pilot decision-making process and authority. The Respondents must not be allowed, at the detriment to a right created in The Act, to exact a certain financial outcome in contravention to authority vested in pilots. If allowed, this will not end well for aviation.

Second Prong - A pilot in command is given, in 14 CFR §§1.1 and 91.3 combined administrative and final authority as to the operation of an aircraft and that includes the physical and mental status in preparation for the operation of such aircraft. This authority must not be usurped.

> ***"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"***

As discussed earlier, the Respondents interfered in the Petitioner's authority and duties in violation of §91.11. Since the pilot medical certification process is, as a matter of course and for legal and lawful reasons, cast in stone and arguably will not change as it has not for decades, practices that erode and subvert the process must be kept at bay.

In this case, rights of pilots and copilots created in The Act must be protected. They must not be allowed to be used as the stick to influence pilot decision-making. When pilot rights are protected, by extension, the FAA pilot medical certification process will also be protected and preserved.

Compromised authority in aviation equals compromised safety. Such authority embodied in the FAA pilot medical certification process, where informed consent is bedrock, ensures the solvency and validity of the process, continuity of Public Policy, and safety.

A wholesale approach under the coercive threat of termination to accept any medical treatment(s) or procedure(s) is an invasion of Public Policy, unjustifiable, and a threat to aviation. Such invasion is not limited to commercial aviation however, it migrates into the general aviation sector as a whole corrupting a system that has served aviation very well for decades. This Court must protect the exercise of authority vested in pilots and copilots by protecting their right to compensation and a private right to action is the solution in this case.

REASON 2 – FINDING REMEDY IN THE LAW AND SPLITS IN THE COURT

First Split - Now that a violation of a right has been established, it is imperative that a remedy is found. The collective bargaining agent did not and cannot create this right, nor did it create the authority vested in pilots, thus the grievance process under the RLA cannot be the path forward. As discussed in *Norris v. Hawaiian,* binding arbitration is not suited for the resolution of disputes rooted in the law or Public Policy.

There is a clear split in the Courts of Appeal. Nearly 70 years ago, the Fifth Circuit found a private right to action in The Act for a pilot to recover compensation owed to him by the air carrier. Today, the Ninth Circuit is denying the Petitioner a private right to action to recover compensation owed to him by the air carrier and, more importantly, to exercise his authority under the law. Never before has interference in the pilot FAA medical qualifications and standards, or subversion of authority on a large scale, been made a determinant resulting in an air carrier violating the duty of maintaining compensation. The soundness of the Fifth Circuit ruling in *Laughlin,* the current events, is still if not more valid today. Respectfully, after all these years, it is time to revisit the private right to action in this case.

Second Split - There is yet another split in the Courts. The Ninth Circuit, in contradiction to the Arizona State Supreme Court, upheld the District Courts decision not to rule on the employment contract and the opinion that a provision in the Respondents employee manual, that had been relied on by the Petitioner for decades, and is a well-established practice by both parties, is not a contractual term for it is only binding on the Petitioner,

concluding that there is no violation of an employment contract.

The ruling not only defies logic as discussed above but contradicts a Supreme Court ruling. In *Leikvold* the Arizona Supreme Court ruled that such terms and provisions constitute an employment contract. The District Court did not rule on the contract however, it used its discretion to arrive at the conclusion that AA has no obligation. The law disallows the Respondents interference in the Petitioners medical as it was so stated in the manual. The manual clearly stated that it is the pilot responsibility; thus, it is the pilot's authority. The intent in the manual language is very clear, the Respondents' obligation is not to interfere. The Respondents demanded an unlawful act of the Petitioner, which is not enforceable, for which he refused resulting in severe punishment delivered by the Respondents. This cannot stand under any employment contract.

The reasons for granting this petition are many but most notably, and with all due respect, considering the law surrounding the case, granting the petition will answer the question at its core. The chilling effects of the air carrier imposition of medical treatment(s) or procedure(s) not authorized, regulated, or approved, that impact FAA pilot medical certification standards and its effect on Public Policy and safety, which are inextricably tied to pilot compensation, pose a threat to aviation and the traveling public. It turns The Act and Congress's intent on its head.

In this case, the Respondents leveraged their duty for compensation under The Act to coerce the Petitioner to accept a medical treatment(s) or procedure(s) and abandon authorities vested in him in The Act. It is a

purposeful violation of the rule of law and the Congressional intent and the remedy must not be illusive as it has been made by the lower Courts who had a very good understanding of the Petitioner's filings.

The Act intended to compensate pilots and copilots by the air carrier who are only FAA medically qualified to provide transportation to the public and it must be equally as certain, it was the intent of Congress to give the pilot the right to recover what is owed.

In combination, rule 14 CFR §91.3 and Administrator definition in 14 CFR §1.1, as illustrated in detail above, give the pilot FAA administrator authority, a heavy burden and great authority that must not be compromised or eroded in any way. Against that backdrop, it is of value stating, American Airlines must not be allowed to circumvent and subvert the law and selectively and with impunity compensate pilots who are willing to bend or violate the rules, and deny compensation owed to those who refuse to in complete violation of Congressional intent in The Act.

IN CONCLUSION

This is a simple case that is deeply rooted in Public Policy and The Act. In rights and authorities of pilots and copilots created in and through The Act.

The Petitioner's claim to his right to be compensated is rooted in The Act. The regulations are simply what The Act demanded, a standard that the Respondents violated and by doing so attacked the Petitioner's right.

Manipulating, or coercing a violation of aviation law and obligations set by the FAA and Congress and subsequently denying the Petitioner his claim to his right must not go unanswered.

There are the splits in the courts, two of which are separated by 70 years, but yet here we are, conditions arose requiring a revisit.

The Petitioner has presented more than enough prima facie evidence and the lower Courts denied the Petitioner any remedy for rights violated and claimed, all the while usurping pilot authority.

For the reasons set above, the Petitioner, an airline Captain with almost 40 years of experience, believes the lower Courts are in error and respectfully asks the Court to issue a writ of certiorari.

——————— Oral argument requested. ———————

Respectfully submitted, July 23, 2024

/s/ Bahig Saliba

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