First Amendment -vs.- RLA

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, ***or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.****"*

-United States Constitution, First Amendment, 1791.

This is the supreme law of the land and it is well into its third century of governing political discourse, rallies, and lobbying throughout the United States. Contrary to the understanding of most in the air transportation industry, there is no exception for airline pilots. If you take the time to read the First Amendment closely, you will not find any reference to how airline pilots must have their political activities muzzled at the behest of a law passed 85 years ago.

In fact, there are no provisions to muzzle the political speech, press, assembly, or petitioning of the government of anyone involved in high profile occupations

The Railway Labor Act is not our UCMJ. It never has been, nor will it ever be; we believe it is time we quit acting as if it were. We are citizens with full enjoyment of the First Amendment, just as any civil rights demonstrator, war protestor, Tea Party activist, newspaper columnist, TV reporter, artist, photographer, author, or teacher. Our profession does not limit our political activities any more than if we were auto mechanics, acoustical engineers, physicians, landscapers, used car salesmen, or coffee baristas.

The First Amendment allows for individuals to influence others to form groups. That is what freedom of the press and freedom of speech are all about. Those groups are free to peacefully assemble, without permit or harassment. Those groups are free to petition the government to fix the problems government has created

This is basic high school civics. It is a shame we have seem to have forgotten this lesson.

The courts have steadfastly held that corporate entities also enjoy this First Amendment protection. This could apply to a corporation, such as an airline or Boeing, or a foundation, non-profit, partnership, a labor union, or many other types of organizations.

Corporations routinely collect money and lobby Congress for their interests. This is the bulk of the billions of dollars spent every year trying to influence the legislative agenda. It matters not if the intended outcome is the awarding of a military contract, the location of a bridge, the nutritional content of processed food, trade agreements, labor law, zoning changes, or the construction of a sports arena. Corporations also directly endorse and fund many political candidates who may sympathize, or could be made to sympathize, with the interests of the corporation. South of the Rio Grande, it’s called a bribe; north of the Rio Grande it’s called a campaign contribution. Regardless of its name, it accomplishes the same thing. Non-profits, foundations, and unions also do the very same thing, which is why many of these organizations are headquartered inside The Beltway.

Passenger airlines have routinely rallied their employees, in addition to hiring professional lobbyists, to canvass Capitol Hill for the purposes of securing route authority. Recently, the freight airlines have lobbied Congress for relief from the RLA for certain classes and craft of labor under their corporate umbrella. The various pilot associations spend some of our dues money to attempt to influence legislation in the favor of pilots. They fund campaigns, shake hands, have lunches, and try to influence members of Congress to see things our way.

So does the ATA. Guess who has more money and more influence?

So, if it is a contest of money, and we are at a tremendous funding disadvantage, why do our pilot associations keep trying the same, failed tactics? They do because it has "always been done that way."

It's time for a new playbook. It's time to think strategic. It's time for the "nuclear option."

Captains Moak and Bates have garnered much favorable press for attempting to become more conciliatory in their approach to leading their respective pilot associations. It is thought this method produces the necessary environment for achieving the goals of labor and those of management. If not, management would simply stall until pilots became much less strident.

We note that this conciliatory approach wasn't used by management during the past decade when management handed out term sheets from bankruptcy court, or had gone to court to quash the use of parts of their agreements they didn't happen to like. Lorenzo, Ferris, and Crandall were never conciliatory toward labor. In fact, it was when pilot associations have been concerned about being management's partner in helping the airline, by granting wage, and productivity concessions, that management was at its most strident. When management's rhetoric was warm, it only blanketed an icy torrent of self-serving opportunism. Ask American Airlines pilots how "pull together, win together" worked out after their 2003 restructuring.

Nevertheless, the current pilot associations are trying to smile and reinvent history in an attempt to move our profession forward. We wish them luck; history says they will need it.

Détente was also a “win-win” of sorts. The Soviet Union was able to attain an ongoing tactical and strategic dominance in the mid-Cold War, while Western politicians got fawning press at home. Both sides got what they wanted. It wasn’t until a different group of Western leaders, who were interested in game changers, rather empty accolades, that the Cold War turned in our favor.

It is no different with our relationship with management and government. As long as we are content to lose, management and government will still play this game. Why wouldn’t they?

By now, you are probably asking what the First Amendment, RLA, and détente have to do with anything that could promote the piloting profession. They are all related because the First Amendment gives us protection to fix the abuses of the existing regulatory paradigm, outside of the restrictions of the RLA, provided our leadership cares to change the game or enough of the rank-and-file take matters into their own hands to save their careers.

OPERATION ORANGE seeks to use the First Amendment protections, afforded to everyone in the United States, to petition the government to fix the regulatory paradigm around the piloting profession. It seeks to do so via peaceful protest. By a critical mass of pilots withdrawing their services, tremendous pressure will be brought to bear on the airlines and government to implement our proposed legislative agenda, called “The Fair Treatment of Experienced Pilots Act - Part 2.”

The SOS is the game changer. That is the weapon system management and government have no answer and it is the only one they fear.

All we have to do is implement it.

It can happen in two ways:

-**GRASS ROOTS EFFORT** (currently under way): This would have thousands of pilots come out from the control of the pilot associations, and exercise their First Amendment rights, as we have explained throughout the various documents published by OPERATION ORANGE. If this option gets traction, it will be very difficult for the pilot associations (or at least the current

leadership) to retain credibility. If pilots are capable of banding together, across corporate lines, without the auspices of their respective pilot associations, it is difficult to imagine a scenario where the current union leadership isn't replaced from A-Z with extraordinarily strident and militant leadership.

-**UNION LED EFFORT**: The same would be accomplished, but the pilot associations retain control over the pilots and thus the implementation and goals of the operation. The mere threat of such an action should suffice to achieve any legislative goal. Management and government would be foolish to allow the pilots to have an operational display of an SOS. The advantage to a union led effort is that it can be quickly brought to bear to address malfeasance in government/management.

Union leaders get briefed by staff attorneys about the power of federal judges to issue injunctions against willful violation of various laws and contracts. They subsequently assume they are muzzled from speaking out and leading without the prior approval of government or management. These attorneys are not necessarily giving bad advice, as judges have reliably enjoined unions from taking unilateral action against their employer under the RLA. No union is allowed to change the status quo, just as airlines are not allowed to change the terms and working conditions of agreements they sign under the RLA.

The key is the scope of the Railway Labor Act. The RLA addresses how both parties to an agreement in the airline industry have to approach implementation and the eventual amending of the agreement. **The RLA does not cover political speech, nor any speech**. The RLA can prevent a union from calling a unilateral work action contrary to the RLA, such as a sick-out geared to bring pressure regarding the contractual interpretation of the integration of an acquired airline (provided it is not a "major dispute"), but it can't quash anyone from speaking out about the law. The First Amendment prevents this:

> "Congress shall make **no law** respecting an establishment of religion, or prohibiting the free exercise thereof, **or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.**" *[emphasis added]*

Congress is prohibited from enacting a law which would prevent anyone from speaking out and trying to amend an existing law. Even the First Amendment can be criticized, and changed via the amendment process. The RLA isn't sacrosanct, above criticism from those subject to its governance, nor immune from having pressure brought to bear for its amendment. This is not the UCMJ for airline pilots.

Federal judges cannot enjoin actions covered by the First Amendment, no matter how inconvenient to the airline industry. They can enjoin actions covered by existing laws, such as the RLA, if the actions so enjoined are clearly under the purview of those laws. A non-sanctioned work action for the purposes of bringing pressure to influence an active agreement under the RLA is not permissible, because it clearly falls under the RLA. A union-led protest for the purposes of bringing pressure to influence the implementation of a law enacted by Congress is not subject to the whims of federal judges, because it clearly falls under the First Amendment.

A federal judge can prevent a party to an existing contract from unilaterally changing the terms of that contract. A contractor can have an agreement with a class of labor which pays at a rate which happens to be 75 cents over the prevailing minimum wage. There is nothing preventing the laborers in that contract from joining an effort to get the minimum wage changed upward by $1.50. No federal judge can tell those laborers, nor the foreman of the worksite, they can't petition Congress to get the law changed.

If those laborers peacefully assembled to petition the government to change the law, they would be free to do so under the auspices of the First Amendment. If it happened during working hours, their employer could replace them, but no judge could prohibit their activities, nor fine their foreman for calling the meeting. A judge could do so if their purposes were to change the existing contractual language, absent a Congressional edict.

The Thirteenth Amendment prohibits your absenteeism from work from being construed as a crime. If 10,000 pilots refuse to show for work, for whatever reason, the government isn't going to send the SWAT team to fill the cockpits. That would be false imprisonment, kidnapping, and a host of other felonies. Federal judges didn't play the part of truant officer for Tea Party rallies to

ensure everyone was on an authorized absence from their employer and they are not allowed to act as truant officers for the airlines.

We need enough pilots to ground the system, not just create make-work for the human resources departments. By grounding the system, we can't be replaced and by grounding the system, we can bring enough pressure to Congress to get the laws changed.

Walking around in circles on our days off, holding signs, and circulating pieces of paper with signatures will have no effect on Congress. Those activities are done to make the protestors feel important, not pressure elected officials. They don't care if we are upset, because they are not addicted to our money. They only care if the planes don't move, because they are addicted to our labor. As long as you are at the controls when scheduled, they don't care how upset you are on your days off. We could picket Capitol Hill every day for the next decade and they won't care. If we ground the system for a day, they will care and they will act to get the system moving.

That brings us to a decision point.

Are we going to act to reverse the purposeful damage inflicted on our profession and the flying public, or are we going to opt for "peace in our time," and business as usual, while accepting the permanent decline of the industry? That question is inescapable. Each and every one of us must answer it individually, and we must also answer it corporately.

Many pilots will see the minor improvements in some of the collective bargaining agreements as a sign the tide has turned and that pattern bargaining is on its way up. Keep in mind that all of these comparisons are with agreements made under the heavy hand of bankruptcy with federal judges shoving these agreements down our throats; of course they look good in comparison.

We have not had a sustained upward pattern-bargaining cycle since Deregulation. We have been trapped in a very broad downward pattern bargaining cycle over that time for all the reasons highlighted in the various OPERATION ORANGE documents.

Couple this myopic view of current negotiations with the aging population of pilots, and it won't take much to put the pilot unions in a position to cut another deal to avoid bankruptcy, so as to save the 55-65 year old pilots, but sell out those 53 and under. This will happen if the economy recesses again.

Mollifying the pilot corps is the best strategy for management to pursue, until they can get a federal government openly hostile to organized labor - like they had eight years ago. This could happen as early as January of 2013. It is highly likely that private-sector labor will get swept up into the public outrage over public-sector unions and an entire corpus of law will be passed to eliminate most of the labor protections that built the American middle class. Pilots, most certainly, will not be spared.

For now, management can grant scheduling and pay improvements with little concern for the future. This will keep pilots complacent during their rapidly closing window to act in their own self-interest. We could wake up one morning to the air carriers racing toward bankruptcy, with an aging pilot population, and pilot unity in disarray. Their investments in the next year will pay handsomely as they rewrite all provisions pilot labor leaders secured during this time of consolidation. Foreign labor will likely be brought in to bridge any gap that might appear, just as it has in every other industry gutted by the global wage arbitrage paradigm.

This should not be taken as our opposition to some prospective improvements in the UA-CAL and AA pilot contracts. We are highly skeptical that these improvements will be long lasting. The UA-CAL scope violations should be enough to convince all but the most egregious lickspittles among us that management hasn't changed one bit. If they can keep scope moving against us, they stand to easily recoup any concessions they grant in a bankruptcy filing. Pay and scheduling are fairly easy to for a bankruptcy judge to rewrite, whereas scope is considerably more tricky.

Likewise, AMR management's sudden willingness to negotiate in good faith, after a half-decade of stonewalling behind the RLA, is highly suspect. Occam's Razor suggests they are just trying to rent the goodwill of their pilots to get them through staffing issues of their own creation. Their incessant press

releases about how they have the most expensive pilots in the industry doesn't fit with their sudden willingness to improve pay and scheduling provisions. We believe this is a gamble they hope to undo if the elections break in their favor.

The recent order of several hundred shiny jets (most of which are vendor financed) will undoubtedly entice many pilots to throw caution to the wind and gut their scope clause. AMR management will likely threaten to rescind much of their order if the AA pilots refuse to expand the exceptions to their scope clause, and along with that rescission, much of the agreements-in-principle that address scheduling and quality life advancements.

The bottom line: management wants us to allow ourselves to be replaced by underpaid, inexperienced pilots. They will give anything to get it, because once they do, they will never have to give anything again.

This is why we remain highly skeptical regarding these glimpses of sunshine in recent pilot negotiations and corporate restructuring. We believe the various pilot associations need to unify around OPERATION ORANGE to make potential abuses of the bankruptcy laws, RLA, under-experienced pilots, and foreign subsidizing of industry capital unworkable. If they do not, these will all hit at once, creating another "perfect storm" of pilot career retrenchment.

We remain dedicated to growing a grass-roots effort to effect these changes. We also welcome pilot association leaders to embrace these proposals, whether openly or discretely, under the protection of the First Amendment. Our opposition (ATA) is unified against our goals and their unified actions have produced fruit. We need to meet that challenge with unity and tactics capable of carrying the fight on our terms. We encourage everyone to pressure their union leaders to adopt a highly unconventional contingency plan, such as OPERATION ORANGE, in the event current management actions align with their 30 years of history.

Moak and Bates are staking the future of the pilot profession on the fanciful idea that management will reciprocate their congeniality, despite all living memory to the contrary. Management's actions prevent us from being able to determine the wisdom or folly of such a strategy until it is too late. Prudence dictates that all trust be verified, especially when dealing with entities that see

fit to reserve unto themselves the right to cheat, lie, break agreements, or commit any act that serves their goals, regardless of how much it violates employee goodwill or endangers the flying public.

We agree that if an olive branch is to be extended, arrows need to be at the ready in the event that olive branch is not genuinely reciprocated. Having a unified pilot corps across the industry gives our pilot associations the ability to use a “nuclear option” when dealing with management/government. OPERATION ORANGE is a game changer that fits that need.

Once again, by the time we discover management’s true intentions, we will be at a crisis point. If we are not ready to walk out en-masse, we will all be replaced one-by-one. Management has been doing this very thing for 30 straight years and nothing has changed in the industry to warrant their new tone. The management teams are the same, as are the boards of directors. Something is afoot that the broader piloting corps do not understand. Pilot associations have a rich history of believing management “smooth talking” with predictable, consistent, and disastrous results.

Insanity is doing the same thing over and over again while expecting different results. OPERATION ORANGE is something different expecting to bring about different results.

It’s time to try something different. It’s time for OPERATION ORANGE. Call your pilot associations. Call your fellow pilots. Nothing is going to change without a fight.

THIS IS OUR TIME.