IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BRYAN P. SPENCE, individually and as a representative of a class of similarly situated persons, and on behalf of the AMERICAN AIRLINES, INC. 401(K) PLAN and the AMERICAN AIRLINES, INC. 401(K) PLAN FOR PILOTS,	§	Case No. ____________
Plaintiffs,	§	**CLASS ACTION COMPLAINT**
v.	§	
AMERICAN AIRLINES, INC., the AMERICAN AIRLINES EMPLOYEE BENEFITS COMMITTEE, FIDELITY INVESTMENTS INSTITUTIONAL, and FINANCIAL ENGINES ADVISORS, LLC,	§	
Defendants.	§	

> Many American workers don't realize that their hard-earned money is being used against them. Firms whose job is to deliver investment returns are instead weaponizing retirement funds, public pensions and other investments in pursuit of nakedly ideological goals. It is perhaps the most severe breach of the fiduciary standard in American history.

Marlo Oaks & Todd Russ, Editorial, *A Historic Breach of Fiduciary Duty*, Wall St. J., May 15, 2023.

Plaintiff Bryan P. Spence, individually and as representative of a class of participants and beneficiaries of the American Airlines, Inc. 401(k) Plan and the American Airlines, Inc. 401(k) Plan for Pilots (collectively, the "Plan"), brings this action under the Employee Retirement Income Security Act, as amended, 29 U.S.C. § 1001, *et seq.* ("ERISA"), against Defendants American Airlines, Inc. ("American Airlines"), American Airlines Employee Benefits Committee (the "Employee Benefits Committee"), Fidelity Investments Institutional ("Fidelity"), and Financial Engines Advisors, LLC ("Financial Engines") (collectively, "Defendants"). Defendants have breached their fiduciary duties in violation of ERISA by investing millions of dollars of American Airlines employees' retirement savings with investment managers and investment funds that pursue leftist political agendas through environmental, social and governance ("ESG") strategies, proxy voting, and shareholder activism—activities which fail to satisfy these fiduciaries' statutory duties to maximize financial benefits in the sole interest of the Plan participants. The unlawful decision to pursue unrelated policy goals over the financial health of the Plan is not only flatly inconsistent with Defendants'

for investors. Defendants selected these funds and continued to hold them within the Plan after they had become imprudent to further their own preferences and interests.

9. Defendants have (a) failed to act solely in the interest of the participants and beneficiaries of the Plan for the exclusive purpose of providing them financial benefits, in violation of ERISA, 29 U.S.C. § 1104(a)(1)(A); (b) failed to act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA, 29 U.S.C. § 1104(a)(1)(B); and (c) failed to monitor the performance of the Plan's fiduciaries and investments. Defendants breached their fiduciary duties to the Plan and the Plan participants and are liable to restore all losses to the Plan resulting from their breaches, as alleged more particularly herein.

10. To remedy these fiduciary breaches and other violations of ERISA, Plaintiff brings this action individually and as representative of the proposed class of Plan participants and beneficiaries, to recover and obtain all losses resulting from each breach of fiduciary duty, and for injunctive relief to prevent ongoing and future violations of ERISA arising from Defendants including ESG investment options in the Plan.

11. Pursuant to 29 U.S.C. §§ 1109 and 1132, Plaintiffs seek to recover the following:

(a) A declaratory judgment that the actions and omissions of Defendants described herein violate ERISA and applicable law;

(b) A permanent injunction against Defendants prohibiting the practices described herein and affirmatively requiring them to remove from the Plan all investment options that use ESG investment strategies;

(c) Equitable, legal or remedial relief for all losses and/or compensatory damages;

(d) Attorneys' fees, costs and other recoverable expenses of litigation; and

(e) Such other and additional legal or equitable relief that the Court deems just.

JURISDICTION & VENUE

12. Plaintiff brings this action pursuant to 29 U.S.C. § 1132(a)(2) and (3) which provide that participants in an ERISA employee retirement plan may pursue a civil action on behalf of the plan to remedy breaches of fiduciary duties and other prohibited conduct and to obtain monetary and equitable relief as set forth in 29 U.S.C. §§ 1109 and 1132.

13. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1332 because this lawsuit presents a federal question under ERISA.

14. Venue is proper in the Northern District of Texas pursuant to 29 U.S.C. § 1332(e) and 28 U.S.C. § 1391 because American Airlines, Inc.'s

areas qualifies for inclusion in an ESG funds' investment portfolio. In contrast, an ESG fund will not consider a company with a poor track record in these areas for inclusion in its portfolio, even if the company is very profitable and it would otherwise be a good investment.

37. Like other types of funds, ESG funds adopt one of two possible approaches to portfolio construction: They either passively track an index, or actively pick investments based on their own research. Actively managed ESG mutual funds conduct their own research to identify companies that meet their criteria. Passive ESG funds rely on third-party indexes to screen companies for their compliance with different ESG factors.

38. ESG fund managers use portfolio screening as a process by which the fund manager reduces its universe of eligible investments based on non-pecuniary factors. Screening criteria based on non-pecuniary factors may also be used in the creation of an index that is used by ESG funds. Funds that use portfolio screening based on non-pecuniary factors, or that track an index that uses portfolio screening based on non-pecuniary factors, cannot be included in an ERISA plan's investment portfolio consistent with ERISA's mandate to maximize financial returns in for the sole benefit of the plan participants.

39. ESG funds have an established record of underperformance. In a recent paper published in the Journal of Finance, University of Chicago researchers analyzed Morningstar ESG ratings of more than 20,000 mutual funds representing over $8 trillion of investor savings. Although the highest

ESG-rated funds attracted more capital than the lowest rated funds, none of the high ESG-rated funds outperformed any of the lowest rated funds.

40. Over the past five years, global ESG funds have underperformed the broader market by more than 250 basis points per year, an average 6.3% return compared with a 8.9% return. This means an investor who puts $10,000 into an average global ESG fund in 2017 would have about $13,500 today, compared with $15,250 he would have earned if he had invested in the broader market.

C. ESG Proxy Voting and Shareholder Activism

41. Investment management companies have trillions of dollars of Americans' retirement savings under management. These companies, which own roughly 75 percent of the shares of America's publicly traded companies, must seek to earn the highest financial return possible for retirement plan participants and beneficiaries.

42. Through proxy voting, many of these investment management companies prioritize their political biases and ESG priorities over financial performance. While a vote of shareholders may sound like a fair approach, most proxy votes are cast on behalf of shareholders by fund managers and are not based on a survey of their clients' wishes. The fund managers pursue an ESG agenda by voting the shares of their clients—including ERISA plan participants—on ESG proposals advanced primarily by leftist activist groups which do not seek to maximize profits or shareholder returns. In other words,

(c) Defendants breached their fiduciary duties by selecting and including ESG funds as investment options for the Plan and Plan participants despite the ESG funds having financial returns that underperformed compared with similar non-ESG funds;

(d) Defendants breached their fiduciary duties by selecting and including ESG funds as investment options for the Plan and Plan participants despite the ESG funds engaging in shareholder activism in pursuit of ESG goals.

74. Each instance of harm suffered by Plaintiffs and the class members has directly resulted from a common course of conduct that violated ERISA. Thus, individual questions, if any, pale in comparison to the numerous common questions of fact and law presented in this lawsuit.

75. Determination of the following common questions of fact will resolve in one stroke the following issues that are central to the validity of each one of the individual class member's claims:

(a) To whom are the fiduciaries liable for the remedies provided by 29 U.S.C. § 1109(a);

(b) Whether the fiduciaries of the Plan breached their fiduciary duties to the Plan;

(c) What amount of losses to the Plan resulted from each breach of fiduciary duty; and

(d) What Plan-wide equitable and other relief should be awarded because of Defendants' breaches of fiduciary duties.

Typicality

76. The claims alleged by Plaintiffs and the resultant harms are typical of the claims of each member of the proposed class. Typicality exists because all absent class members have been harmed, or are at risk of harm, as a result of the same violations of ERISA alleged herein.

Adequacy

77. Plaintiffs will fairly and adequately protect the interests of the class. There are no conflicts of interest between the Plaintiffs and the other class members. Plaintiffs have retained counsel with extensive experience litigating complex class action lawsuits in federal court. Plaintiffs' counsel has committed sufficient resources to represent the class. Plaintiffs' counsel therefore are well suited to fairly and adequately represent the interests of the class.

B. Rule 23(b)(1)

78. Class certification is appropriate under Rule 23(b)(1)(A) because prosecution of separate actions for breaches of fiduciary duties would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct regarding Defendants' fiduciary duties and liability to the Plan under 29 U.S.C. § 1109(a).

79. Class certification is also appropriate under Rule 23(b)(1)(B) because adjudications by individual participants and beneficiaries regarding breaches of fiduciary duties and remedies for the Plan would, as a practical

participants and beneficiaries, and for the exclusive purpose of providing benefits to Plan participants and beneficiaries and defraying reasonable expenses of administering the Plan, in violation of their fiduciary duties of loyalty under 29 U.S.C. § 1104(a)(1)(A).

89. Through these actions and omissions, Defendants failed to discharge their duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would have used in the conduct of an enterprise of like character and with like aims, thereby breaching their fiduciary duties of prudence under 29 U.S.C. § 1104(a)(1)(B).

90. Each Defendant is personally liable, and Defendants are jointly and severally liable, under 29 U.S.C. §§ 1109(a), 1132(a)(2), and (a)(3), and to make good to the Plan the losses resulting from their breaches.

91. Each Defendant knowingly participated in each breach of the other Defendants knowing that such acts were a breach, enabled the other Defendants to commit breaches by failing to lawfully discharge such Defendant's own duties, and know of the breaches by the other Defendants and failed to make any reasonable and timely effort under the circumstances to remedy the breaches. Accordingly, each Defendant is also liable for the losses caused by the breaches of its co-fiduciaries under 29 U.S.C. § 1105(a).

92. Additionally, each Defendant who employed another Defendant or Defendants for the purpose of carrying out one or more of the fiduciary

duties described herein on behalf of the Plan is vicariously liable under the doctrine of respondeat superior. American Airlines, through its corporate officer, employed the Employee Benefits Committee, Fidelity, and Financial Engines, and directed them to take actions necessary to delegate, coordinate, effect, or maintain the investment of Plan assets. American Airlines provided each of these Defendants access to the Plan and the authority to act on behalf of the Plan in carrying out the responsibilities prescribed. Likewise, the Employee Benefits Committee employed its constituent members with such discretion, access, and authority as necessary to drive the investment of Plan assets. The improvident investment decisions and abdication of responsibility for corrective action or oversight by each Defendant employed by another occurred within the scope of that employment, and vicarious liability attaches accordingly.

Count II: Breach of Duty to Monitor Fiduciaries
29 U.S.C. § 1105(a)

93. The preceding factual statements and allegations are incorporated herein by reference as if fully set forth herein.

94. American Airlines and the Employee Benefits Committee are or were fiduciaries of the Plan whose duties included a duty to monitor the performance of other Plan fiduciaries.

95. American Airlines, through its corporate officers, was responsible for appointing and removing members of the Employee Benefits Committee. This carried with it the duty to monitor the performance of the fiduciaries