

Written Testimony of Stephanie Spanja

Good afternoon. My name is Stephanie Spanja. I am a Senior Attorney for the Air Line Pilots Association, International (ALPA), which represents more than 77,000 pilots at 41 airlines in the United States and Canada. On behalf of the thousands of pilots it represents in Minnesota, ALPA supports the provision that will repeal the exclusion of flight crew from coverage under the Minnesota Earned Sick and Safe Time (ESST) law.

Repealing this exclusion ensures that thousands of flight crew based in Minnesota will be treated the same as everybody else on this committee and in Minnesota under the ESST. Treating flight crew differently is not only unfair but is completely unnecessary. Contrary to what some of you may have heard – or will hear – from airline representatives, the Airline Deregulation Act (ADA) does not prevent Minnesota or any other state or locality from enacting employment-related legislation, such as ESST, and applying them to airlines.

Before the ADA was enacted in 1978, the federal government, through the Civil Aeronautics Board (CAB), regulated the relationship between the airlines and the traveling public by determining the price, routes and service airlines provided to customers. When Congress deregulated the airline industry, it ended the power of the CAB to regulate the airline-customer relationship. As part of the ADA, Congress enacted a preemption provision intended to prevent the states from reregulating that relationship along the three axes of CAB jurisdiction: price, routes, or services.

The few cases in which the Supreme Court has considered the scope of preemption under the ADA have all involved state laws governing how the airlines market and sell their services to the public – the focus of airline deregulation – and not employers' obligations to their employees. In these cases, the Supreme Court found that the ADA preempts the application of state legislation and common law to airline fare advertising and frequent flyer programs.

However, within the past two years, the Supreme Court has refused to grant certiorari in two cases that involved the application of employment-related state legislation to flight crew members. Both

of those cases came out of the Ninth Circuit, which covers nine states and two U.S. territories. One of these, from 2021, concerns state paid sick leave laws as they apply to flight crew members.

In *Air Transport Association of America, Inc. v. Washington Department of Labor and Industries*, Ninth Circuit found that Washington State's paid sick leave law applies to flight crew members and is not preempted under the ADA. The Ninth Circuit reached that conclusion because Washington State's paid sick leave law "does not regulate the airline-customer relationship or otherwise bind the airlines to a particular price, route or service." In 2022, the Supreme Court denied A4A's petition for certiorari, and so this case stands as good law in the Ninth Circuit.

We believe that the Ninth Circuit got it right, and that the *Washington* case remains good law because it is firmly in line with the purpose of ADA preemption – to prohibit states from regulating the airline-customer relationship – and with the Supreme Court's ADA preemption jurisprudence, which likewise focuses on the airline-customer relationship.

There is also strong reason to believe that if Minnesota removes the exclusion of flight crew members from ESST, and the airline industry challenges this in federal court, that the Eighth Circuit (in which Minnesota lies) would find that ESST was not preempted by the ADA. In a 2017 case, *Watson v. Air Methods Corporation*, the Eighth Circuit found that a common law whistleblower claim brought by an air carrier employee was not preempted under the ADA. In reaching that holding, the Eighth Circuit distinguished "state laws that regulate how [a] service is performed" – which are preempted under the ADA – and "those that regulate how an airline behaves as an employer or proprietor" – which are not preempted under the ADA.

The ESST would regulate how airlines behave as employers and put them on the same level as other employers in Minnesota. If the flight crew member exclusion is removed, ESST would prohibit airlines, like other employers in Minnesota, from punishing Minnesota-based employees for taking ESST leave. By including flight crew members in the ESST, Minnesota will ensure that these employees can take sick time to tend to their own and their family members' illnesses and medical care, without having to worry about facing a penalty for taking care of these basic needs.