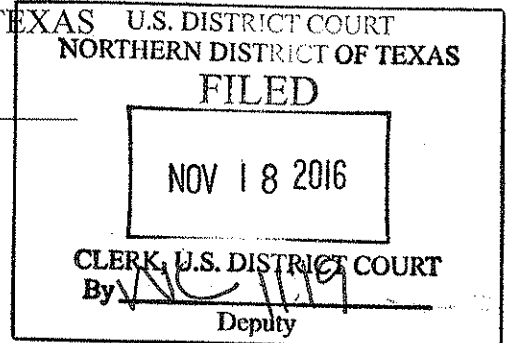


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ORIGINAL

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



THOMAS E. PEREZ, Secretary of Labor,

Plaintiff,

v.

ASSOCIATION OF PROFESSIONAL  
FLIGHT ATTENDANTS,

Defendant.

Civil Action No. 4:16-CV-1057

**ORIGINAL COMPLAINT**

Plaintiff, Thomas E. Perez, Secretary of Labor, alleges as follows:

**NATURE OF THE ACTION**

1. Plaintiff brings this action under Title IV of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 481–483, for a judgment declaring that the January 9, 2016 election of union officers conducted by the Association of Professional Flight Attendants (APFA) is void, and directing the APFA to conduct a new election for the offices of National President, National Vice President, National Secretary, and National Treasurer, under Plaintiff’s supervision, and for other appropriate relief.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 482(b), 28 U.S.C. § 1331, and 28 U.S.C. § 1345.

3. Venue lies in this district pursuant to 29 U.S.C. § 482(b) and 28 U.S.C. § 1391(b).

#### PARTIES

4. Plaintiff, Thomas E. Perez, is the duly appointed Secretary of Labor, United States Department of Labor. Plaintiff is authorized to bring this action under section 402(b) of Title IV of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 482(b).

5. The APFA is, and at all times relevant to this action has been, an unincorporated association residing within the County of Tarrant, Texas, within the jurisdiction of this district. The APFA's headquarters are located at 1004 West Euless Boulevard, Euless, Texas 76040, within this district.

#### FACTUAL ALLEGATIONS

6. The APFA represents itself to be, and at all times relevant to this action has been, a national labor organization engaged in an industry affecting commerce within the meaning of sections 3(i), 3(j), and 401(a) of the Labor-Management Reporting and Disclosure Act (29 U.S.C. §§ 402(i), 402(j), and 481(a)).

7. The APFA, purporting to act pursuant to its Constitution and Bylaws, conducted an election of officers on January 9, 2016, and this election was subject to the provisions of Title IV of the Labor-Management Reporting and Disclosure Act (29 U.S.C. §§ 481–483).

8. By letter dated January 22, 2016, the complainant, Samuel Morales, a member in good standing of the APFA, protested the election to the APFA's National

Ballot Committee.

9. By letter dated January 29, 2016, the National Ballot Committee denied the protest.

10. By letter dated February 7, 2016, Morales appealed the decision of the National Ballot Committee to the APFA's Executive Committee.

11. By letter dated February 10, 2016, the Executive Committee denied the appeal.

12. Having exhausted the remedies available within the union and having received a final decision, Morales filed a timely complaint with the Secretary of Labor on March 7, 2016, which was within the one calendar month required by section 402(a)(1) of the Labor-Management Reporting and Disclosure Act (29 U.S.C. § 482(a)(1)).

13. By letter signed March 24, 2016, the APFA agreed that the time within which Plaintiff may bring suit with respect to the APFA's aforesaid election be extended to July 8, 2016.

14. By letter signed June 15, 2016, the APFA agreed that the time within which Plaintiff may bring suit with respect to the APFA's aforesaid election be extended to August 12, 2016.

15. By letter signed July 21, 2016, the APFA agreed that the time within which Plaintiff may bring suit with respect to the APFA's aforesaid election be extended to August 26, 2016.

16. By letter signed August 16, 2016, the APFA agreed that the time within which Plaintiff may bring suit with respect to the APFA's aforesaid election be extended to October 21, 2016.

17. By letter signed October 18, 2016, the APFA agreed that the time within which Plaintiff may bring suit with respect to APFA's aforesaid election be extended to November 4, 2016.

18. By letter signed November 2, 2016, the APFA agreed that the time within which Plaintiff may bring suit with respect to the APFA's aforesaid election be extended to November 18, 2016.

19. Pursuant to and in accordance with sections 601 and 402(b) of the Labor-Management Reporting and Disclosure Act (29 U.S.C. § 521 and 29 U.S.C. § 482(b)), Plaintiff investigated the complaint and, as a result of the facts shown by his investigation, found probable cause to believe that: (1) violations of Title IV of the Labor-Management Reporting and Disclosure Act (29 U.S.C. §§ 481–483) had occurred in the conduct of the APFA's January 9, 2016 election; and (2) that such violations had not been remedied at the time of the institution of this action.

20. The APFA engaged the services of a contractor, BallotPoint Election Services, owned by CCComplete, headquartered in Portland, Oregon, to conduct the January 9, 2016 election of officers using an internet-based electronic voting system in which voters cast their votes using the internet and telephone.

21. This internet-based electronic voting system permitted the names of voters to be linked with their voting choices. The system stores and maintains member

identifying information and voting records on two servers in a way that could allow individuals with access to both of the servers to identify how a member voted.

22. Member records, including voter email addresses, are stored on one server, while members' votes are stored on another server. A link between the two servers, and thus between the voters and their votes, is evident because the system is capable of sending a confirmation email message to the voter after the voter has voted successfully or after a voter has voted but the system has malfunctioned, so that the voter is notified that he or she must vote again.

23. During the course of its investigation, Plaintiff obtained data and records from BallotPoint. Using these data and records, which reflected information stored on the electronic voting system's servers, Plaintiff was able to match the names of 4,082 voters out of 9,355 votes cast to their choice of candidates.

24. The internet voting system also did not permit an observer to effectively observe the election. Observers were limited to viewing a tally sheet projected from a personal computer connected to the voting website and were not able to verify that the votes were recorded and tallied correctly.

#### FIRST CAUSE OF ACTION

25. The APFA violated section 401(a) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 481(a), when it used an electronic voting method in the January 9, 2016 election that permitted voters to be linked to their votes.

#### SECOND CAUSE OF ACTION

26. The APFA violated section 401(c) of the Labor-Management Reporting

and Disclosure Act, 29 U.S.C. § 481(c), by denying a candidate's right to have an observer in the January 9, 2016 election, because the electronic voting system did not permit an observer to verify that a vote was recorded and tallied accurately.

27. The violations of sections 401(a) and 401(c) of the Labor-Management Reporting and Disclosure Act (29 U.S.C. §§ 481(a) and (c)) may have affected the outcome of the APFA's election for the offices of National President, National Vice President, National Secretary, and National Treasurer.

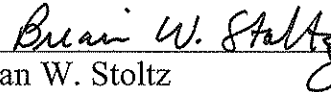
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment:

- (a) declaring the APFA's election for the offices of National President, National Vice President, National Secretary, and National Treasurer to be void;
- (b) directing the APFA to conduct a new election for the offices of National President, National Vice President, National Secretary, and National Treasurer under the supervision of Plaintiff;
- (c) for the costs of this action; and
- (d) for such other relief as may be appropriate.

Respectfully submitted,

JOHN R. PARKER  
UNITED STATES ATTORNEY



Brian W. Stoltz  
Assistant United States Attorney  
Texas Bar No. 24060668  
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Dallas, Texas 75242-1699  
Telephone: 214-659-8626  
Facsimile: 214-659-8807  
brian.stoltz@usdoj.gov

Attorneys for Plaintiff

JS 44 (Rev. 07/16)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b>                  Thomas E. Perez, Secretary of Labor</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff _____                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c)</b> Attorneys (Firm Name, Address, and Telephone Number)                  Brian W. Stoltz, Assistant U.S. Attorney, 1100 Commerce Street, Third Floor, Dallas, Texas 75242, brian.stoltz@usdoj.gov</p>	<p><b>DEFENDANTS</b>                  Association of Professional Flight Attendants</p> <p>County of Residence of First Listed Defendant <u>Tarrant County</u>                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (if Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding   
 2 Removed from State Court   
 3 Remanded from Appellate Court   
 4 Reinstated or Reopened   
 5 Transferred from Another District (specify)   
 6 Multidistrict Litigation - Transfer   
 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 Title IV of Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 481-483

Brief description of cause:  
 Action to set aside labor union election as invalid

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    **DEMAND \$** \_\_\_\_\_

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**     Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 11-18-2016    SIGNATURE OF ATTORNEY OF RECORD Brian W. Stoltz

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_