



## **OPERATION ORANGE: Illegal Action or Protected Activity?**

*“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

OPERATION ORANGE is a peaceful protest of the current regulatory paradigm in pilot labor law. It seeks to change the laws through the means afforded us by the Founders of the United States, rather than simply providing a forum for pilots to impotently commiserate the purposeful destruction of their profession.

Many parties will have their reality fundamentally altered by the changes in the law. This is nothing new, as all laws change things for better and worse, depending on where you stand before the law. Some parties insist the entire effort is “illegal,” and are attempting to discourage participation.

This is an important question to answer. Running afoul of the law will not bring about the results needed, and may end up being counter-productive.

Critics have yet to show the which law stands to be broken by pilots exercising their rights to peacefully assemble and petition Congress for redress. We believe this notion of illegality descends from the failed understanding of the Railway Labor Act, and the Bill of Rights. In most cases, this misunderstanding is not willful. But in many cases, we believe this assertion is one of purposeful misdirection that serves to protect an interest that may be jeopardized by pilots acting under their own auspices.

OPERATION ORANGE has clearly stated the method of petition and the means by which we intend to get the law changed. We are keeping no secrets in this regard.

We believe that the First Amendment provides the needed protections for pilots to exercise their ability to influence Congress in a peaceful, but forceful fashion. The First Amendment is 45 words in length and has been law for over 220 years. The rights enumerated within have been tested over and over again, and we believe clearly support for our methods.

This is best displayed by positing hypothetical scenarios and asking simple questions. Often times, the initial complexity of a given situation is too large to digest in one bite. As such, we will break down the various issues that are in-play, analyze them one by one, and then reconstruct the original premise.

Bear with us. This is a long read, but worth it.

**Question #1:** Can senior citizens write letters to Congress for purposes of increasing Social Security benefits?

**Answer:** Absolutely. No discussion necessary.

**Reason:** First Amendment applies to this kind of activity. (petition)

**Issue resolved:** First Amendment applies to communicating with Congress about laws we want changed.

**Question #2:** Can civil rights activists assemble in large numbers to pressure Congress to change laws regarding civil rights?

**Answer:** Absolutely. It is part of our history.

**Reason:** The First Amendment applies to peaceful assembly, and to petitioning the Government for redress. “Assembly” infers an undefined plural of people.

**Issue resolved:** Widespread participation is also covered under the First Amendment. First Amendment freedoms are not diminished as popularity increases.

**Question #3:** Can baristas at Buckstar Coffee organize a campaign to have Congress pass a law prohibiting the importation of non-”fair traded” coffee? This campaign would consist of Buckstar baristas using their days-off for purposes of assembling at the district offices of their various Congressional representatives, writing letters, making phone calls, etc.. They develop a website and call their cause “OPERATION BROWN.”

**Answer:** Yes.

**Reason:** This is First Amendment protected activity. (speech, assembly, press, and petition)

**Issues resolved:** Employees can organize their message under the

protection of the First Amendment. They can petition for causes that are of concern to them and that directly relate to their profession, without regard to the opinion of their employer. Buckstar, in this hypothetical, has no basis to have a federal court enjoin this activity. Buckstar is free to petition Congress to morph the coffee importation laws to its liking, under the same protections as the baristas.

**Question #4:** In the above example, can the baristas assemble at the local offices of their various Congressmen, write letters, make phone calls, and read updates from the “OPERATION BROWN” website in lieu of serving coffee at a restaurant? In other words, does their unexcused absence from work, while petitioning Congress, create a criminal offense? Would the administrators of the “OPERATION BROWN” website be prohibited from calling for such an action?

**Answer:** Yes, the baristas would be as protected under the First Amendment to peacefully petition Congress on their days-on as they would be on their days-off.

No, unexcused absence from a private sector employer does not constitute a criminal offense.

No, the administrators of the “OPERATION BROWN” website are protected when calling for a peaceful petition of redress. No clear and present danger exists. This is not shouting “FIRE” in a crowded theater.

**Reason:** This is First Amendment activity. The Thirteenth Amendment prohibits Buckstar from entering a criminal complaint against the baristas. Law enforcement is prohibited from arresting baristas for absenteeism, and returning them to their employer to forcibly mix extra-hot, no-whip lattes.

The First Amendment makes no provision for its exemption due to other obligations. Congress shall make no law abridging the First Amendment freedoms available to the baristas. Hundreds of thousands of groggy, irritable morning commuters do not have standing to compel baristas to serve coffee, while denying them their civil rights to petition Congress in the peaceful manner of their choosing.

The administrators of the “OPERATION BROWN” website are protected from prosecution and governmental interference, since the website is not advocating violent overthrow of the government nor creating a clear and present danger. It is merely advocating baristas use their First Amendment rights in a peaceful manner to change the laws of the land, as was intended by the Founding Fathers. Denial of civil rights, under the color of law, is a criminal and civil offense, where law enforcement officials may be sued and prosecuted individually.

No District Attorney could enter a legal argument that a single barista, or group of baristas, face criminal sanction because they failed to serve coffee for 8 hours. It does not matter if the baristas skipped work to petition Congress, sleep off a hangover, attend college classes, tend to a headache, visit elderly shut-ins, write poetry, “moonlight,” etc.

**Issues resolved:** The First Amendment isn’t diminished due to a work schedule, as Congress is prohibited from creating a law providing such a feature. This would be a clear abridgement of the right to assemble and petition.

The “OPERATION BROWN” website advocates peaceful assembly and petition to change the coffee importation laws. It is protected, even though the message indirectly caused Congress to receive thousands of phone calls from groggy, irritable citizens.

**Question #5:** Using the above scenario, but substituting lobbying Congress to appropriate money for breast cancer research, would this petition also be similarly protected? The baristas also develop a website called “OPERATION PINK,” which similarly advocates peaceful petition for breast cancer research.

**Answer:** Baristas, oncologists, school teachers, news reporters, auto mechanics, gardeners, etc., are all allowed to petition Congress for such a provision in the law. There is no prohibition on developing a website called, “OPERATION PINK.” The website cannot be enjoined for a change of content, so long as it is peaceful.

**Reason:** Government cannot get involved in issuing censorship because of a change of content. The same laws that protect pornographers, and avant-garde artists, also protect bloggers/writers from having their content banned. It does not matter if it is coffee importation or breast cancer; editorial control over the subject matter is beyond the reach of government. The First Amendment, and supporting case law, is abundantly clear on this point.

**Issue resolved:** Baristas (or anyone else) are allowed to petition the government on any issue of their choosing, so long as the means are peaceful. In this instance, Buckstar and the morning commuting public, are harmed by this entirely lawful, but mildly inconvenient method of petition. Buckstar is entitled to change its offer of compensation to entice baristas not to participate in such a petition, but cannot use law enforcement to forcibly restrain baristas into the restaurant to serve coffee. Issues of unlawful detainment, or false imprisonment arise.

**Question #6:** Ron Paul's followers wish to install a "gold standard" for the US currency. They obtain a permit from the National Park Service to hold a rally on the Capitol Mall, near the Federal Reserve building in Washington. Their goals are to petition Congress, in much the same manner as the Tea Party protesters in 2010, the Civil Rights assemblies of the 1960s, or the Nuclear Freeze movement of the early 1980s. Many supporters of Paul are absent from their employment in order to attend the rallies. Much news coverage is garnered.

The rallies are entirely peaceful. Coffee baristas from all coffee restaurants join the effort and the United States goes "decaf" for two weeks. Additionally, certified Mercedes auto mechanics join the movement and there is widespread absenteeism, causing frustration for drivers of European sedans.

Is this protected under the First Amendment?

**Answer:** Yes, this is no different than the Civil Rights issue.

**Reason:** The unavailability of full-serve caffeine is modestly disruptive to the nation, but as our previous examples showed, the government lacks the authority to compel baristas (or anyone) to complete their work schedule.

Baristas have the freedom to be absent from their employer, but are also subject to the lawful corrective actions of that employer. In the case of baristas, they are relatively easy to replace and the various coffee restaurants initiate an employment search to restaff their restaurants. The same would also apply to certified Mercedes auto mechanics, although they are much harder to replace. The government would have no more authority to forcibly detain and coerce certified Mercedes mechanics than it would relatively unskilled baristas.

The issue of the “gold” standard is one of unprecedented disruption to the US economy. Changing the backing of the currency is an undertaking of enormous proportions, but still doesn’t change the ability for government to deny law abiding citizens to peacefully petition for change in the law. Government has no more right to prohibit peaceful petition to change the currency backing, than it would to prohibit peaceful and non-treasonous protest of a war. Government buildings have been venues for war protesters since 2003, and the Nuclear Freeze movement operated undaunted, even though the consequences of such held civilization in the balance. Advocating a change in war policy is as far-reaching as advocating a change in the backing of the currency, and certainly several orders of magnitude beyond the scope of changing airline labor laws.

Great, sweeping changes to laws have been peacefully attained in this country. We have used peaceful petition to establish the suffrage of women, the banning of intoxicating liquors, the un-banning of intoxicating liquors, young adult suffrage, direct election of Senators, de-escalation of foreign wars, protections for the disabled, amending of child-labor laws, trade policy, civil rights, etc.

The First Amendment isn’t restricted to protecting inconsequential changes to the law. All laws, even the Constitution itself, are subject to citizen petition. Congress is elected by the citizens, and has the authority to change all laws. When the Constitution stipulates that all legislative powers are vested in the Congress, and that Congress is elected by the citizens, the purpose of the First Amendment is very clear. It is how we are connected to our legislature.

**Issue resolved:** All laws are subject to citizen input, via the Congress. Congress may not prevent citizens from exercising their enumerated, First Amendment rights to for purposes of changing laws.

**Summary of resolved issues:**

- Citizens can write letters to Congress to get favorable changes in the law.
- First Amendment rights are not diminished by increased participation.
- First Amendment rights are not abridged by a work schedule.
- Government coercion is not available for purposes of preventing voluntary employee absenteeism.
- Citizens may write and publish their views for purposes of lobbying Congress to change the law.
- The First Amendment covers petition for changes to law, without regard to significance or subject matter.

**Question Set #7:**

1. Can Buckstar baristas write letters to Congress for the purposes of getting the pilot labor laws changed?
2. Can Buckstar baristas use their days-off to petition Congress to change the pilot labor laws, in the same manner they did for their petition to change the coffee importation laws?
3. Can Buckstar baristas peacefully petition Congress on any day they wish, to change the pilot labor laws, using the same method as they did for the coffee importation laws?
4. Would the answers to the three preceding questions be the same if certified Mercedes auto mechanics were engaged in the political activity, in place of, or in addition to, the baristas?

**Answers:** Yes, on all counts.

**Reason:** It would be a preposterous notion that the actions of coffee baristas constitute a criminal offense when peacefully lobbying to change the pilot labor laws, but not so for changing the coffee importation laws, or currency backing laws. The Railway Labor Act has no jurisdiction over peaceful assembly and petition, nor does it have jurisdiction over employees



engaged in full-serve caffeine endeavors, unless those employees are a recognized class-craft for the rail or air transportation industries of the United States.

**Issues resolved:** Peaceful assembly and petition for change of the pilot labor laws is protected by the First Amendment, regardless of who is advocating for them. The RLA does not have jurisdiction over political issues.

**Question Set #8:**

1. Can part 121, unionized pilots engage in a letter writing campaign to change the coffee importation laws?
2. Can part 121, unionized pilots utilize their **days-off** to peacefully assemble, write letters, make phone calls, fax, picket, and otherwise petition Congress to change the coffee importation laws?
3. Can part 121, unionized pilots similarly petition the Congress to adopt a “gold standard” for the US currency?

**Answers:** Yes, on all counts.

**Reason:** Contrary to the understanding of the established powers in the air transportation industry, pilots do not lose their First Amendment rights when they are placed on the seniority list of a part 121 air carrier. Most are US citizens and endowed with certain inalienable rights, with petitioning Congress, according to the Constitution, among them.

It is profoundly absurd to believe that in the cases of former military officers, who took oaths to defend and protect our Constitution against all enemies, these pilots would be denied the very rights they routinely risked their lives to protect. It is equally absurd to believe that non-veterans are to be denied the freedoms the military defended on their behalf.

**Issue resolved:** Part 121 pilots are in full possession of their First Amendment rights, as are all other citizens. First Amendment rights do not diminish with the increasing utility of one’s vocation.

**Question Set #9:** (OPERATION ORANGE Phase III)

1. Can pilots participate in a letter writing campaign to get the pilot labor laws changed?
2. Can part 121, unionized pilots engage utilize their **days-off** to peacefully assemble, write letters, make phone calls, fax, picket, and otherwise petition Congress to change the pilot labor laws?

**Answers:** Yes, on both counts.

**Reason:** Exercise of the First Amendment for pilots is no different than that of any other segment of society. The First Amendment allows pilots to peacefully advocate for changes to pilot labor laws, coffee importation laws, currency backing laws, marriage laws, helmet laws, tax laws, metric laws, trade law, immigration law, etc. The Railway Labor Act has no jurisdiction over political activity, since the First Amendment expressly prohibits it.

**Issue resolved:** Pilots are not prohibited from political activity designed to change the pilot labor laws.

**Question #10:** Can an labor union of auto mechanics openly advocate non-violent change in pilot labor law?

**Answer:** Yes, as auto mechanics are citizens with rights.

**Reason:** The First Amendment applies to groups, organizations, and corporations, as well as individual people.

**Issue resolved:** A labor union is protected under the First Amendment, if it is engaged in political activity.

**Question #11:** Can an airline holding company, or airline trade association, spend shareholder value for purposes of advocating changes to pilot labor law, such as prohibiting rank-and-file ratification of collective bargaining agreements, reduction of minimum qualifications for licensing, expanding the amount of flying pilots can perform in a given day or week, the inability of pilot unions to strike in the event of a unilateral managerial change in the terms and conditions of employment, waiving of anti-trust considerations when outsourcing flying to foreign airlines, etc?

**Answer:** Yes. It is a regular feature of airline lobbying efforts, and many airlines have utilized their pilot employee groups to directly lobby Congress for awarding of foreign route authority.

**Reason:** Airlines know they are entitled to petition Congress to change the laws surrounding the employment of pilots as much as baristas lobbying for change to coffee importation, mechanics petitioning for breast cancer research funding, or Ron Paul supporters advocating change in the currency backing. The fact they are likewise under the Railway Labor Act does not intimidate them in the least.

It's their First Amendment, too.

**Issues resolved:** Advocacy of change to pilot labor law is already a protected right for entities subject to the Railway Labor Act.

**Question #12:** Absent a release from the National Mediation Board, can a pilot association advocate pilots change the “status quo” (work slowdown, work-to-rule, “work safe,” strike, etc.) in order to bring about leverage in *CONTRACT NEGOTIATIONS* with the applicable airline?

**Answer:** No, the RLA prohibits this kind of activity.

**Reason:** The Railway Labor Act has jurisdiction over contract negotiations and dispute resolution in the rail and air transportation industries. The union's activities are clearly designed to bring unlawful pressure to the negotiations. There is no political component to the activity, therefore the First Amendment does not apply.

**Issue resolved:** The RLA has jurisdiction over activity designed to violate the means of negotiating contracts and resolving disputes within the air transportation industry. The First Amendment applies to efforts to lobby Congress, which is not being attempted in this example.

**Question #13:** Can a pilot association openly advocate the peaceful assembly and petition to change the pilot labor laws, such as letter writing campaigns, or utilizing days-off for assembling at various Congressional offices, phone calls, faxes, rallies, etc.?

**Answer:** Absolutely, as unions are allowed to petition Congress on any manner of their choosing.

**Reason:** Corporate lobbying has been recognized by the Supreme Court.

What makes pilot associations so special that they cannot advocate peaceful assembly and petition for redress? This prohibition is self-induced. They are so accustomed to losing, it is all they know. The Railway Labor Act has no jurisdiction over political activity, regardless of the subject matter. The First Amendment expressly prohibits it.

**Issue resolved:** The First Amendment applies to pilot unions advocating change to pilot labor law, in the same manner as any other group of people advocating change to any other law. It's their First Amendment, too.

**Final Questions:** How can anyone hold the position that a group of pilots lack the Constitutional protections to speak, write, peacefully assemble, and petition the government for purposes of redress of unfair pilot labor laws, regardless of the days they choose to assert these rights?

How is it that any other group of private citizens may use these rights to influence the legislative agenda on any topic of their choosing, regardless of its significance, but pilots have limitations? Why can OTHER citizens lobby for changes to pilot labor laws, but pilots cannot? Why are OTHER citizens protected from criminal sanction, due to absenteeism, but pilots are not?

How do pilot associations, with their budgets in the tens of millions of dollars per year, fail to see that they are entitled to the same rights as any other group of citizens? How do they consistently refuse to avail themselves to the same political freedoms their counterparts in airline management do with great frequency and success?

**Answer:** These limitations are entirely self-induced.

**Reason:** Pilots have been conditioned to compartmentalize, self-deprecate, and “mission-hack” their way through life. The very idea that a pilot may cause distress to someone else, or be the cause of failure, is deeply disturbing to most pilots. Therefore, when a pilot gets his pocket picked, under the color of law, he puts his hands in his pockets, looks down at his running shoes, and says, “Aw, shucks.” He believes, in some way, it was his fault.

Airline executives know this, which is why they deliberately steer their enterprises into financial or operational disaster then, at the last minute, throw the problem in the pilot’s lap and say, “If you don’t save us, we are all dead. A massive pay cut and outsourcing of your flying will save us. We are all counting on you.”

**Issues resolved:** The First Amendment has just as much applicability to pilots petitioning Congress for redress as anyone else. They are entitled to use the same tactics as anyone else. Their vocation does not diminish their access to the First Amendment, even though their vocation does give them leverage many other people do not possess.

The real reason for insisting OPERATION ORANGE is a less-than-lawful proposition descends directly from the scope of disruption that would result from pilots fully exercising their First Amendment rights. Some people may believe that anything so dramatic must be illegal. Again, many pilots have become so accustomed to losing, they have forgotten how to win.

There is no doubt that if Phase IV of OPERATION ORANGE is ever implemented, it would be highly disruptive. Congress may have laws on the books prohibiting widespread disruption in commerce. Those laws, should they exist, are a creation of Congress - by definition.

The problem with such a scenario comes from those first 45 words in the Bill of Rights, otherwise known as the First Amendment. That part of the Constitution expressly prohibits Congress from making ANY LAW

abridging the freedoms enumerated within. Among those freedoms are speech, press, peaceful assembly, and petitioning the government for redress - all of which are being used by OPERATION ORANGE.

Any law prohibiting pilots from withholding their services in a manner conducive to peaceful assembly and petition is invalid - any law. In fact, Congress has passed laws enabling citizens, denied their civil rights under the color of law, the ability to sue for damages.

It's our First Amendment, too.

We sympathize with those that wish only to travel hassle-free (or as much as can be expected within the modern air transportation system) to their meetings, reunions, and vacations. There are solutions for keeping pilots at the controls, safely moving a mobile population all over the globe. The easiest of these is Congress passing "The Fair Treatment Of Experienced Pilots Act - Part 2" prior to pilots availing themselves to the full spectrum of their First Amendment rights (OPERATION ORANGE Phase IV). After 30 years of abuse, paycuts, outsourcing, bad-faith negotiating, etc., it is time to level the playing field. It is time for the law to create parity in pilot contract negotiations, and fix the damage it has enabled since Frank Lorenzo used the bankruptcy courts as his personal negotiators.

The only thing we have not directly addressed is the idea of the Railway Labor Act, and the various bankruptcy laws regarding airline employee contracts, being in a senior position to the Bill of Rights. All of our examples have presumed an acceptance of the subordination of all laws to the Constitution/Bill of Rights.

To think otherwise is a profoundly ignorant, and ludicrous proposition - one that is essential in order to declare OPERATION ORANGE an illegal endeavor.

It's our First Amendment, too.

For more information visit [OPERATIONORANGE.org](http://OPERATIONORANGE.org)