UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BRYAN P. SPENCE, individually and as a representative of a class of similarly situated, and on behalf of the AMERICAN AIRLINES, INC. 401(k) PLAN and the AMERICAN AIRLINES, INC. 401(k) PLAN FOR PILOTS, Plaintiff, v. AMERICAN AIRLINES, INC., et al, Defendants.	§ § § § § § § § § § §	Case No. 4:23-cv-00552-O

DEFENDANTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND THE FINAL JUDGMENT AND REQUEST FOR HEARING

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Counsel for Defendants American Airlines, Inc. and the Employee Benefits Committee

Pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, Defendants American Airlines, Inc. and the American Airlines Employee Benefits Committee respectfully move for reconsideration and limited amendments of the Final Judgment entered by this Court on September 30, 2025 (ECF No. 165).

As set forth in the concurrently filed Brief in Support of Defendants' Motion, American's goal in seeking limited clarification and related amendments to the Court's injunction is focused solely on ensuring the Order can be implemented effectively, and without unintended harm to the participants in American's 401(k) Plans. To that end, American respectfully requests amendment of items 1, 3(a)-(c), and 4 of the Court's injunction. The proposed changes will render the injunction administrable without, American submits, compromising the Court's objectives. American does not seek to modify the remaining portions of the Court's injunction, which it has already begun to implement in good faith. American respectfully requests that the Court conduct a hearing on this Motion.

Respectfully submitted,

Dated: October 28, 2025

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CERTIFICATE OF CONFERENCE

On October 24 and 27, 2025, in accordance with Local Rule 7.1(b), the undersigned certifies that Defendants' counsel conferred with counsel for Plaintiff regarding the relief requested in this motion. Plaintiff is opposed to the relief requested.

/s/ Russell D. Cawyer
Russell D. Cawyer

CERTIFICATE OF SERVICE

On this day, October 28, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5 (b)(2).

/s/ *Russell D. Cawyer*
Russell D. Cawyer

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BRYAN P. SPENCE, individually and as a representative of a class of similarly situated, and on behalf of the AMERICAN AIRLINES, INC. 401(k) PLAN and the AMERICAN AIRLINES, INC. 401(k) PLAN FOR PILOTS, Plaintiff, v. AMERICAN AIRLINES, INC., et al, Defendants.	§ § § § § § § § § § § §	Case No. 4:23-cv-00552-O

DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND THE FINAL JUDGMENT

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I. Introduction

American Airlines appreciates the Court's careful effort to craft an injunction that ensures compliance with ERISA's twin duties of loyalty and prudence, while avoiding "overbreadth that could disturb the Plan's investment structure and undermine proper management of the Plan." ECF No. 165 at 2. American's goal in seeking limited clarification and related amendments to the Court's injunction is focused solely on ensuring the Order can be implemented effectively, and without unintended harm to the participants in American's two 401(k) Plans ("the Plan").

To that end, American respectfully requests amendment pursuant to Federal Rule of Civil Procedure 59(e) of items 1, 3(a)-(c), and 4 of the Court's injunction. The proposed changes will render the injunction administrable without, American submits, compromising the Court's objectives. American does not seek to modify the remaining portions of the Court's injunction, which it has already begun to implement in good faith.

Regarding item 1, American understands the Court's goal is to ensure that proxy voting and other stewardship activities are conducted solely in Plan participants' financial interests. To effectuate that purpose, American respectfully requests the injunction be amended to apply only to the managers of the Plan's core investment options and not to the thousands of investment options available through BrokerageLink, the Plan's brokerage window, which American does not select, control or influence. Tailoring the injunction in this way aligns it with the Department of Labor's guidance recognizing that fiduciaries are not responsible for selecting or monitoring brokerage-window investments. Without such amendment, American could be forced to shut down its brokerage window entirely. American also requests that it be allowed to implement item 1 through a certification and review process, explained further below.

Items 3.b and 3.c require American to make certain certifications to participants regarding the activities of the Plan's asset managers and other third-party vendors. To ensure it can do so,

American seeks confirmation that it may rely on attestations provided by those managers, subject to independent review, and that the Court's reference to "provable financial performance" was not meant to exclude investment strategies grounded in ordinary, industry-standard financial risk/return criteria.

Regarding item 4, American seeks to confirm the scope of its disclosure obligations regarding the membership of itself and its Plan vendors in organizations "principally devoted to achieving DEI, ESG, climate-focused investment or stewardship objectives." ECF No. 165 at 3-4. As explained below, American respectfully requests limited amendments to specify which third-party entities fall within the requirement, the process for obtaining the necessary information, and what constitutes a covered "membership."

Finally, item 3.a requires reporting of financial transactions and relationships between American and its relevant Plan vendors and managers. American requests several amendments to define the transactions covered by the Order and assure that the requested information is in fact determinable by American.

Each of these proposed amendments is intended to promote compliance with the Court's Order as well as its Findings of Fact and Conclusions of Law, and to protect Plan participants from the administrative burdens or disruptions that would result if the injunction were read too broadly. These modifications would, in American's view, serve the Court's remedial aims and honor the balance Congress struck in enacting ERISA, which is designed both to protect employee rights to benefits while also encouraging employers to maintain and improve employee benefits programs. *Martinez v. Schlumberger, Ltd.*, 338 F.3d 407, 411 (5th Cir. 2003).

American respectfully requests that the Court conduct a hearing on the issues raised in this Motion.

The parties met and conferred about this motion on October 24 and 27, 2025. Plaintiff indicated that he is opposed to the relief requested.

II. Background

Following a four-day bench trial, the Court concluded that American and its Employee Benefit Committee ("EBC") had satisfied ERISA's duty of prudence, but had breached their duty of loyalty. *Spence v. Am. Airlines*, 775 F. Supp. 3d 963, 973 (N.D. Tex. 2025). The Court directed the parties to file supplemental briefs regarding economic loss, damages, and the scope of any injunctive relief. *Id.* at 1011.

After post-trial briefing, the Court held that "Plaintiff failed to sufficiently establish actual monetary losses to the Plan," ECF No. 165 at 2, and concluded, accordingly, that Plaintiff was not entitled to monetary damages, disgorgement, fee reimbursement, or other monetary equitable relief. *Id.* at 4. Nevertheless, to "ensure fidelity to ERISA's fiduciary standards," the Court entered a five-part injunction addressing the Plan's future administration. *Id.* at 2-4. The Court explained that its purpose was to "ensure that Defendants and their investment managers act solely for the pecuniary benefit of the Plan," without "overbreadth that could disturb the Plan's investment structure and undermine proper management of the Plan." *Id.* at 2.

The Court's injunction requires, *inter alia*, that in connection with Plan assets, American prohibit proxy voting and stewardship activities motivated by non-pecuniary objectives; appoint two independent members to its EBC; provide certifications and reports concerning the activities of its investment advisors and managers as well as related financial relationships; disclose information concerning its own and its relevant Plan vendors' affiliations with ESG, DEI, or similar organizations; and implement other policies around plan governance. *Id.* at 2-4.

American appreciates the Court's tailoring of these provisions and has already taken meaningful steps toward compliance. It has begun work on the search process for two independent

committee members. It is also in the process of revising structural elements of the Plan to ensure that American employees shall not serve as Plan fiduciaries or manage the Plan where they also maintain the corporate relationship with any relevant Plan vendor.

Several specific terms of the injunction were first proposed by Plaintiff in his February 2025 supplemental brief on remedies, *see* ECF No. 160, after the Court issued its Findings of Fact and Conclusions of Law. American timely objected, explaining that the proposed remedies "raise[d] new, unpled theories of monetary and injunctive relief and rel[ied] on evidence not admitted at trial." ECF No. 163 at 1. The Court acknowledged that objection as "well-taken," ECF No. 165 at 4, but ultimately adopted some of Plaintiff's proposed terms, with some modification. American thus received definitive notice of its obligations only upon entry of the Court's Order and Final Judgment. It began compliance efforts shortly thereafter and has acted expeditiously and in good faith.

III. Legal Standard

Federal courts possess the inherent authority to clarify or modify their judgments and injunctions to ensure they are clear and capable of enforcement. *Matter of Highland Cap. Mgmt., LP*, 105 F.4th 830, 836 (5th Cir. 2024). As the Fifth Circuit has explained, if a party has "doubts about the meaning of any part of the injunction, it [may seek] district court clarification." *Id.* at 837. The purpose of such clarification is "to 'prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood.'" *Scott v. Schedler*, 826 F.3d 207, 212 (5th Cir. 2016) (quoting *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974)). Indeed, a district court "possesses the inherent procedural authority to clarify its order for causes seen by it to be sufficient." *Colli v. So. Methodist Univ.*, 2011 WL 3524403 at *1 (N.D. Tex. Feb. 14, 2011) (quoting *Melancon v. Texaco, Inc.*, 659 F.2d

551, 553 (5th Cir. 1981)). This discretion allows the Court to refine its decree "as justice requires." *PSSI Holdings, LLC v. Calhoun*, 2021 WL 8315396, at *1 (E.D. Tex. Sep. 13, 2021).

In addition, a party may seek relief under Federal Rule of Civil Procedure 59(e) when reconsideration is necessary to correct clear error, prevent manifest injustice, or present newly discovered or previously unavailable evidence. *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004). Manifest injustice is evaluated on a case-by-case basis and requires the movant to identify "a fundamental flaw in the court's decision that without correction would lead to a result that is both inequitable and not in line with applicable policy." *Bender Square Partners*, 2012 WL 1952265, at *4 (S.D. Tex. May 30, 2012). The Court "has considerable discretion" in resolving such a motion. *Id.*

American's motion is proper under these standards. American seeks neither to relitigate issues nor narrow the injunction's remedial purpose, but instead ensure that the Court's directives can be implemented as intended and without disruption or harm to the Plan and its participants.

IV. Discussion

American has already taken significant steps to implement the Court's injunction. These include beginning a search process for two independent members to join the EBC for five-year terms to help oversee the Plan (item 2) and working to adopt policies that ensure that American employees do not serve as Plan fiduciaries or manage the Plan where they also maintain the corporate relationship with any administrator, advisor, or manager of core Plan assets (item 5). ECF No. 165 at 3-4. American now seeks limited clarification and amendment of certain injunctive provisions which, depending on how they are construed, could prove infeasible or counterproductive to the Court's stated goal of promoting loyal and prudent Plan administration.

A. Proxy Voting Requirements

With respect to the Court's directives that American (1) "shall not permit proxy voting, shareholder proposals, or other stewardship activities on behalf of the Plan that are motivated by or directed towards non-pecuniary ends" and (3.c) "shall … [a]nnually certify in writing to each Plan participant that the EBC, and each administrator, advisor and/or investment manager of Plan assets … will only allow proxy votes to be cast on behalf of Plan participants solely to maximize the long-term financial returns" (ECF No. 165 at 2-3), American respectfully requests several, limited clarifications and amendments to the judgment.[1]

1. Scope of the Proxy-Voting Requirements and Application to BrokerageLink

American requests that the Court's proxy-voting related requirements apply only to the Plan's core investment options in Tiers 1-3 ("Designated Investment Alternatives" or "DIAs"), which were the subject of the litigation, and not to the many investment options and providers included in BrokerageLink, the Plan's brokerage window.

As an initial matter, it would be infeasible for American to monitor or direct proxy-voting activity across the thousands of investment providers and options available in the brokerage window, which include mutual funds, exchange-traded funds, real estate investment trusts, certificates of deposit, and direct investments in individual companies. *Spence*, 775 F. Supp. 3d at 980.

Nor could American render this oversight feasible by limiting the options in the window. The Department of Labor has long cautioned that if a plan sponsor like American selects which investment options are included in the brokerage window, or exercises significant control over those options, it risks converting the entire window into a DIA offering—thereby triggering

1 A proposed order was emailed contemporaneously to Judge O'Connor's email address for proposed order submission to OConnor_Orders@txnd.uscourts.gov

fiduciary obligations to monitor each of those options individually. *See, e.g.*, 29 C.F.R. § 2550.404a-5(h)(4); 29 C.F.R. § 2550.404c-1(d)(2)(iv).

If compelled to monitor the thousands of independent investment options in the brokerage window, American would have no realistic choice but to close the window entirely. That would deprive participants of valuable flexibility in directing their retirement savings. Indeed, the brokerage window exists to expand, not restrict, participant choice by enabling employees to pursue individualized strategies, including conviction-aligned investments that the core Plan menu does not offer. American's Plan participants thoughtfully and intentionally avail themselves of that choice. *See, e.g.*, DX0667 at 6 (noting that 8.7% of participants, and 12.3% of assets, were invested in the Tier IV brokerage window as of March 31, 2021).

Moreover, under ERISA, brokerage windows like the Plan's can permissibly include investment options that pursue ESG, faith-based, or other non-financial objectives. *See* 29 C.F.R. § 2550.404a-5(h)(4). Plan participants, for their part, must affirmatively elect to invest their assets in those Tier 4 brokerage window options. *Spence*, 775 F. Supp. 3d at 980 (finding that the brokerage window "give[s] Plan participants the choice to freely reject the core menu of options selected by the EBC and to open their own self-directed brokerage accounts").

Expanded choice in retirement plans has been found beneficial along many fronts, including by Congress in connection with creating a "mutual fund window" for the federal Thrift Savings Plan. *See, e.g.*, Thrift Savings Plan Enhancement Act of 2009, H. Rep't 11-58 Par 2, P.L. 111-31, Division B ("The Committee recognizes some investors today have sophisticated or specialized investment needs. Participants may want added diversity by investing in funds comprised of real estate investment trusts, emerging markets, or inflation-protected bonds. Other participants may want to align their portfolio with their personal convictions by investing in

socially responsible funds. The self-directed investment options are intended to provide a vehicle for meeting these needs of plan participants without complicating the basic structure of the Thrift Savins Plan.").

In the same spirit, the Plan's brokerage window expands participants' ability to tailor their investments to their own preferences and investment beliefs while leaving the core fiduciary-monitored investment menu intact. Imposing the injunction's restrictions on the brokerage window would eliminate that flexibility and frustrate the statutory purpose of encouraging employers to offer diverse and participant-controlled retirement investment opportunities.

2. Process for Ensuring Compliance

American also seeks to confirm that it may satisfy the Court's injunction by: (1) contractually requiring its Plan investment managers to annually attest or certify to American that they will only cast proxy votes on behalf of Plan participants solely to maximize the long-term financial returns of Plan participants' investments, (2) by implementing a process, including a log, to ensure that American receives those certifications, and (3) by retaining an outside consultant to independently review the proxy voting policies and certifications and report on those to the EBC. This approach would allow American to implement the Court's directive in a practical manner by avoiding redundant or unenforceable obligations on entities over which American lacks direct control. Further, allowing independent review by a qualified consultant would reinforce the Court's objective of ensuring oversight grounded in financial performance, and provide a meaningful compliance record.

B. Investment Objectives

Regarding the Court's requirement that American "[a]nnually certify in writing to each Plan participant that the EBC, and each administrator, advisor, and/or investment manager of Plan assets, that they will only and solely pursue investment objectives based on provable financial

performance ….” (item 3.b, ECF No. 165 at 3), American seeks clarification and several amendments.

First, as with the proxy voting requirements, American requests that 3.b apply only in connection with the Plan’s core investment options in Tiers 1-3 and not to the Plan’s brokerage window. As explained above, this limitation would align the requirement with the Plan’s fiduciary structure, which assigns the EBC oversight only of the DIAs it selects. American has no power (or mechanism) to require the managers of mutual funds and other products in the brokerage window to pursue particular investment objectives and those investments were not part of the suit brought by the class in any event.

Second, American seeks to confirm that it may satisfy the Court’s injunction by: (1) contractually requiring the Plan’s Tier 1-3 investment managers and managed account service provider to annually attest or certify to American that, for the Plan’s core assets, they will solely pursue investment objectives based on financial risk/return criteria; (2) by implementing a policy to ensure that American receives those certifications, including a log; and (3) by retaining an outside consultant to independently review those certifications and report on them to the EBC.

Third, American respectfully requests that the Court replace the term “provable financial performance, not DEI, ESG, sustainability” with “financial risk/return criteria.” American understands the Court seeks to make certain the Plan’s relevant investment advisors and managers pursue investment objectives for core Plan assets based on exclusively financial criteria. This rephrasing ensures that the injunction does not inadvertently forbid forward-looking investment analysis grounded in financial metrics, or preclude American from offering future investment products or strategies based on financial metrics not known or provable today. The amendment also better reflects ERISA’s prudence standard for judging investments, which focuses on a

fiduciary's process, and not the "performance of the investment. The focus of the inquiry is how the fiduciary acted in his selection of the investment, and not whether his investments succeeded or failed." *Donovan v. Cunningham*, 716 F.2d 1455, 1467 (5th Cir. 1983).

Lastly, American wishes to confirm that this injunction does not impede its ability – or the ability of its investment managers – to comply with statutory requirements that ERISA plans not include certain categories of restricted assets, including, for example, collectibles (26 U.S.C. § 408(m)); assets whose incidents of ownership, with limited exceptions, are held outside the jurisdiction of the US courts (29 U.S.C. § 1104(b)); investments that would violate "trading with the enemy" restrictions (50 U.S.C. § 4303(a)); and investments subject to other US government sanctions; *see also*, *e.g.*, America First Investment Policy, The White House (Feb. 21, 2025). Those statutory prohibitions are animated by various considerations, including non-financial objectives, but are integral to the lawful operation of any ERISA plan.

Together, these amendments would preserve the administrability of the injunction while ensuring that the Plan's investments remain focused on financial risk/return factors, which is the balance the Court sought to achieve in ordering injunctive relief.

C. Membership in Organizations

American is working to disclose on its Plan website information about its membership in any groups "principally devoted to achieving DEI, ESG, climate-focused investment or stewardship objectives" (item 4, ECF No. 165 at 3-4), as well as the relevant memberships of each administrator, advisor, and/or investment manager of Plan assets. American seeks several limited clarifications and amendments to ensure that this requirement is administrable.

First, American requests that the required disclosures be limited to American, its Plan investment advisor, its managed account services provider, and the investment providers that manage core Plan assets in Tiers 1-3 (the "relevant Plan vendors"). This limitation aligns the

Court's disclosure requirement with the fiduciary structure of the Plan. The EBC and its investment advisor monitor only the designated investment alternatives, not the thousands of participant-directed options available through the brokerage window. Attempting to obtain disclosure from every investment provider in the brokerage window would be infeasible and would divert resources from fiduciary oversight of the core menu.

Second, American seeks to confirm that it may satisfy its obligations by: (1) contractually requiring the relevant Plan vendors to disclose their applicable memberships to American, as well as descriptions of the terms of those memberships, and (2) disclosing that information on its Plan website. This approach ensures accuracy and efficiency while also providing participants with transparency. The Plan's vendors are best positioned to confirm their own organizational affiliations. Requiring American to independently investigate or monitor all such affiliations would impose a continuing and open-ended obligation that no plan sponsor could realistically discharge.

Lastly, American requests that group membership disclosures be limited to membership in groups with written terms of membership that apply to American, or its relevant Plan vendors with respect to Plan assets. This would focus the reporting on organizations and groups with identifiable membership criteria and would exclude short-term working groups or projects, or one-off activities, such as where an employee speaks at a conference.

D. Financial Transactions Reporting

Regarding the Court's requirement that American provide a written report annually "identifying any financial transactions and/or financial relationships between AA and each administrator, advisor, and/or investment manager of Plan assets, including any of their subsidiaries and/or affiliated entities" (item 3.a, ECF No. 165 at 3), American seeks the following clarifications and amendments.

First, American seeks to confirm that the Court intends to exclude routine commercial transactions, such as purchasing airline tickets for business travel. American maintains corporate travel accounts with many, if not all, of the Plan's third-party vendors and enters into countless air carriage transactions each year. These ordinary-course dealings bear no relation to Plan administration or fiduciary decision-making, and treating them as "financial transactions" for reporting purposes would impose significant costs without corresponding benefit.

Second, with respect to debt and equity transactions engaged in by American on the corporate side, American requests that disclosure be limited to direct, material contractual transactions between American and the investment managers of the core Plan assets in Tiers 1-3. American's stock is traded in the public equity markets, and its corporate bonds and other debt instruments are bought and sold in the secondary debt markets. American has little to no visibility into the identities of the parties engaging in these transactions and could not possibly compile or disclose them. Likewise, American has only limited insight into purchases of primary debt issuances because all such transactions are handled through investment banks and other third-party intermediaries. Thus, limiting disclosures to direct contractual relationships ensures that the reported information is obtainable, accurate, and meaningful.

E. Implementation Period

Finally, American respectfully requests a short implementation period of 150 days to allow it to put in place the contractual arrangements and compliance procedures necessary to implement the Court's injunction in full. Courts have long recognized that injunctive relief must be "mould[ed] . . . to the necessities of the particular case." *Wenner v. Texas Lottery Comm'n*, 123 F.3d 321, 325 (5th Cir. 1997) (quoting *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944)). District courts therefore possess "broad discretion to manage the timing of injunctive relief" to ensure its effective and equitable application. *SAS Inst., Inc. v. World Programming Ltd.*, 952 F.3d 513, 526

(4th Cir. 2020). Courts routinely exercise that discretion to establish compliance windows where the scope or complexity of relief demands orderly implementation. *See, e.g.*, *Streamline Prod. Sys., Inc. v. Streamline Mfg., Inc.*, 851 F.3d 440, 459 (5th Cir. 2017) (injunction requiring defendant to cease use of infringing trademarks "within 120 days"); *M.D. v. Abbott*, 730 F. Supp. 3d 354, 365 (S.D. Tex. 2024), *rev'd on other grounds*, 119 F.4th 373 (5th Cir. 2024) (ordering Texas foster care system to comply with remedial measures "within 30 days").

Modest implementation periods are thus a well-established means of ensuring that injunctions are carried out effectively and consistently. A 150-day phase-in window would ensure that is the case here, thereby furthering the Court's goal of ensuring loyal and prudent Plan management while avoiding disruption to participants or Plan operations.

Respectfully submitted,

Dated: October 28, 2025

/s/ Russell D. Cawyer

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CERTIFICATE OF SERVICE

On this day, October 28, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5 (b)(2).

/s/ *Russell D. Cawyer*
Russell D. Cawyer