

# **EXHIBIT 7**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
FLYERS RIGHTS EDUCATION	)	
FUND, INC, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 19-3749 (CKK)
	)	
FEDERAL AVIATION ADMINISTRATION,	)	
	)	
Defendant.	)	
_____	)	

**DECLARATION OF DANIEL MARK GELLERT**

I, Daniel Mark Gellert , hereby declare and state as follows:

1. I have had a fifty year career as a commercial airline pilot, test pilot for Boeing Aircraft Co., air accident investigator, FAA official, flying safety officer for the US Air Force. I am presently CEO of Aerospace Safety and Security, Inc. My resume is attached hereto as Exhibit A.
  
2. I submit this Declaration in support of the Motion of Plaintiff Flyers Rights Education Fund, Inc., for summary judgment on the grounds that the Defendant Federal Aviation Administration (FAA) has improperly invoked Exemption 4 of the Freedom of Information Act to shield from public disclosure a large number of documents and substantial portions of documents setting out the minimum technical information needed for any independent expert to evaluate advise the public as to the basis for any FAA decision to unground the 737 MAX aircraft.

3. I have reviewed the FAA's Notice of Proposed Rulemaking setting out a proposed Airworthiness Directive approving certain changes to the Boeing 737 MAX aircraft, as a condition for recertification and ungrounding of the aircraft. FAA, *Airworthiness Directives: The Boeing Company Airplanes*, 85 Fed. Reg. 47698 (Aug. 6, 2020). This proposal has generated more than 300 mostly favorable comments, including my own affixed hereto as Exhibit B.

4. The FAA proposal omits any technical data to justify the proposed fixes (i.e., turning off the MCAS software and the autopilot whenever there is disagreement between the two AOA sensors and requiring the aircraft to be flown manually by the pilot to a safe landing zone). For that reason, the FAA proposal raise more questions than it answers.

5. I have reviewed the documents produced by the FAA to FlyersRights in this case, and redactions in those documents. I have also reviewed the Vaughn Index filed by the FAA in this case, including descriptions of the withheld information and of the many documents withheld in their entirety.

6. Many of the documents or portions of documents withheld under FOIA Exemption 4 s "confidential" commercial information, according to the Vaughn Index, consist of Boeing's certification plans; testing methods; means of compliance;" flight test plans and criteria; flight test results; safety analyses; and FAA and government agency or entity comments on safety analyses, all relating to various critical hardware and software components of the 737 MAX or to specific functions of those components.

7. The technical details of how Boeing intends to demonstrate compliance of various equipment and software components with FAA requirements; how Boeing intends to achieve certification of these components by the FAA; the methods of testing; and the results of testing including safety analyses, are the most critical and essential information that would need to be

made public in order to disclose the actual basis for any decision by the FAA to unground the aircraft; and in order for any independent expert, aviation journalist, or public interest advocate to advise the public whether there is a sufficient basis for any FAA decision to unground the aircraft.

8. It is not possible for me, personally, to express any view to the public regarding, or to inform the public about the actual basis for, the FAA re-certification process, and about the issue of whether the 737 MAX is actually safe to fly, without access to the categories of information set out in paragraph 4.

9. For example, in its *Preliminary Summary of the AFAA's Review of the Boeing 737 Max* (Aug. 3, 2020), the FAA claims more than 4,00 hours of flight testing and describes how many crews were involved, what general features were being tested and who had input into the flight plan. But the FAA does not disclose what the test flight plans actually were or any of the specific results of the test flights. Without such information, there is no way to confirm whether the test flight for a particular component or feature actually demonstrated that the component or feature worked properly and safely.

10. Beginning in early 2019, FAA officials have repeatedly committed to the public and to Congress that the agency would be transparent, specifically about the FAA process to certify a design change for the 737 MAX and ensure it is safe to fly, before any decision to unground the aircraft.

11. Beginning in early 2019, Boeing officials as well repeatedly promised transparency with respect to “every subject,” specifically including the certification process.

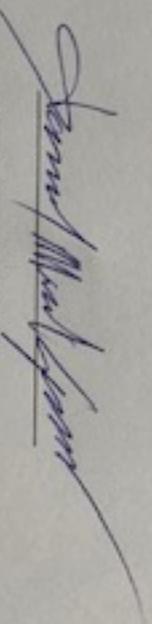
12. I understand that one of the conditions for finding that information is confidential under Exemption 4 is that the information was communicated to the government agency with some assurance by the agency that the information would be kept confidential.

13. Given that the FAA specifically and publicly committed to transparency with the public with respect to the re-certification process, Boeing could not possibly have believed or understood that FAA was providing any assurance that the information Boeing was providing with respect to certification plans, testing plans, details and results, means of compliance, flight test plans and results, and safety analyses would be kept confidential.

14. To the contrary, Boeing would have clearly understood that the FAA could not meet its commitment to transparency with respect to the certification process without making these categories of information publicly available.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on October 26, 2020



Daniel Mark Gellert