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COMMITTEE ON AERONAUTICS

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July 16, 2018

Hon. Mike Lee  
United States Senate  
361A Russell Senate Office Building  
Washington, D.C. 20510

**Re: The Aviation Empowerment Act, S.2650**

Dear Senator Lee:

We write on behalf of the Aeronautics Committee of the New York City Bar Association (the “Committee”) to address the Aviation Empowerment Act, Bill Number S. 2650 (the “Bill”).<sup>1</sup> The Bill redefines the term “common carrier” in Section 40102(a) of the United States Code with the intent to allow for flight phone applications such as FlyTeNow and AirPooler (the “Apps”) to organize general aviation flights flown by non-professional pilots, in exchange for the passengers paying a share of the costs of operating the flights.

The Committee is an organization of New York City area attorneys committed to excellence in the field of Aeronautics Law. The Committee focuses on a wide variety of aviation-related issues, including business, engineering, finance, intellectual property, litigation, and regulatory matters.<sup>2</sup> Many attorneys in the Committee are licensed pilots themselves and/or represent airlines, airports, and related companies. The Committee has studied the Bill in great detail. The Committee generally supports the concept of allowing for non-professional pilots to use the Apps to organize flights in exchange for a share of the costs of flight operations; however the Committee is of the view that, in order to help protect the safety of the flying public, the Bill must impose heightened safety requirements on pilots who would use the Apps to engage in such flight cost sharing.

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<sup>1</sup> This letter is on behalf of the Committee itself and not the members’ clients or organizations.

<sup>2</sup> See *Aeronautics*, NEW YORK CITY BAR, <http://www.nycbar.org/member-and-career-services/committees/aeronautics-committee> (last visited May 20, 2018).

## I. FLIGHT COST SHARING IS BENEFICIAL TO GENERAL AVIATION

The Committee strongly supports general aviation and appreciates how expensive it is to be a pilot. It is estimated that it would cost a general aviation pilot approximately \$33,750 annually to log the 250 hours necessary simply to be able to carry passengers commercially.<sup>3</sup> It has been calculated to cost \$225.30 per hour for a pilot to own a relatively “low cost” 1975 Cessna 172M Skyhawk and fly it 100 hours per year.<sup>4</sup> Obviously, these high costs discourage many individuals either from becoming pilots in the first place or from flying enough hours to remain in compliance with recent flight requirements. Indeed, it has been reported that, since the 1980s, the number of active Federal Aviation Administration (“FAA”)-issued Private Pilot certificates has declined by 55%.<sup>5</sup> The Great Recession helped compound the issue, leading to a significant reduction in airplane sales and general aviation flight activity.<sup>6</sup> The high cost to participate has contributed to general aviation’s decline in popularity.

The Committee supports flight cost sharing because it aids pilots and defers the costs associated with general aviation, thus encouraging greater participation in general aviation. Additionally, there is a critical shortage of commercial pilots—a shortage expected to worsen over time.<sup>7</sup> While 14 C.F.R. Part 91 general aviation pilots are not intended to fill the gap for commercial pilots, we believe that encouraging more individuals to enter the industry is important for the future of aviation.

## II. FLIGHT COST SHARING ALREADY EXISTS

It is important to note that, with or without the Bill, there will be cost sharing flights in the United States. Pursuant to 14 C.F.R. Part 61.113, a pilot may split the costs of a flight with his or her passengers, provided the pilot pays at minimum a “pro rata” share of the costs of the flight. The FAA determined that pilots who solicited passengers using the Apps did not fall under this exception to allow for cost sharing because the solicitation via the Apps rendered them “common carriers.” Specifically, the FAA ruled that pilots using the Apps were common carriers because, through posting specific flights on the Apps and making them indiscriminately available to the public at large, they were “holding out” to the public a willingness to transport them for compensation.<sup>8</sup> Despite the FAA’s decision, pilots routinely arrange for cost sharing

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<sup>3</sup> Christopher Koopman, *Defining Common Carriers*, MECATUS CENTER, 6 (2017), available at: <https://www.mercatus.org/system/files/mercatus-koopman-common-carriers-flight-sharing-v1.pdf>.

<sup>4</sup> *Hypothetical Operating Cost Calculation*, AOPA <https://www.aopa.org/go-fly/aircraft-and-ownership/buying-an-aircraft/tips-on-buying-used-aircraft/hypothetical-operating-cost-calculation> (last visited May 20, 2018).

<sup>5</sup> William Garvey, *Plans Afoot To Stem Decades-long Decline in Private Pilot Ranks*, AVIATION WEEK (Feb. 2, 2018) <http://aviationweek.com/business-aviation/plans-afout-stem-decades-long-decline-private-pilot-ranks>.

<sup>6</sup> See John Zimmerman, *General Aviation Trends in 12 Charts*, AIR FACTS JOURNAL (Sept. 6, 2017), <https://airfactsjournal.com/2017/09/general-aviation-trends-12-charts/>.

<sup>7</sup> John Ostrower, *The U.S. will face a staggering shortage of pilots*, CNN (July 31, 2017), <http://money.cnn.com/2017/07/27/news/companies/pilot-shortage-figures/index.html>.

<sup>8</sup> *FlyTeNow, Inc. v. Federal Aviation Administration*, 808 F.3d 882, 888 (D.C. Cir. 2015).

flights at airports themselves, organized by bulletin board.<sup>9</sup> Conceptually, the Apps merely make the process of connecting pilots and passengers for flight cost sharing more convenient.

The European Aviation Safety Agency (“EASA”) has allowed for flight cost sharing, provided the passengers are first informed of the different safety level of what they are undertaking compared to a flight on a commercial aircraft.<sup>10</sup> In contrast to the FAA’s decision regarding the Apps, the EASA granted permission to the application “Wingly” to use a platform similar to the Apps to more easily connect the public to pilots to engage in cost shared flights.<sup>11</sup> The Committee is not aware of any significant negative outcomes that have resulted from the EASA’s allowance of such platforms for cost sharing.

### **III. THE BILL SHOULD IMPOSE HEIGHTENED SAFETY STANDARDS ON APP PARTICIPANTS**

Despite the clear economic benefits of allowing flight cost sharing to take place, there potentially are safety issues associated with general aviation that we firmly believe the Bill must address in order for flight cost sharing to safely take place on such a large scale. National Transportation Safety Board statistics show that non-professional, general aviation pilots have significantly more accidents, including fatalities, compared to professional pilots.<sup>12</sup> In 2015, general aviation was responsible for over 94% of all aviation-related accidents in the United States, including 93% of the aviation-related fatalities.<sup>13</sup> A study conducted by Embry-Riddle Aeronautical University found that pilot error is responsible for general aviation accidents at least 70% of the time.<sup>14</sup> The same study determined that experienced pilots (e.g. higher qualifications, higher flight time, higher ages, etc.) are significantly less likely to be responsible for pilot error and aviation-related accidents compared to inexperienced pilots.<sup>15</sup>

While non-commercial pilots already engage in cost sharing flights through word of mouth (particularly with family and friends) and via bulletin board, the Apps would make it much easier for pilots, regardless of their experience or ratings, to connect with the public who have no knowledge of the pilot, thereby increasing the number of cost shared flights available.

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<sup>9</sup> Andrea O’Sullivan, *How the FAA Killed Uber for Planes*, REASON (June 27, 2017), <https://reason.com/archives/2017/06/27/how-the-faa-killed-uber-for-planes>.

<sup>10</sup> See *Flying in the EU: Ops in the Air*, EASA, 5, available at: [https://www.easa.europa.eu/sites/default/files/dfu/213111\\_EASA\\_LEAFLET\\_02\\_AIR\\_OPS\\_EN.pdf](https://www.easa.europa.eu/sites/default/files/dfu/213111_EASA_LEAFLET_02_AIR_OPS_EN.pdf) (last visited May 20, 2018); 5 Article 6.4a (a) of Commission Regulation (EU) No 965/2012.

<sup>11</sup> Emeric Wazier, EASA Interpretive Letter (Mar. 14, 2016), available at: [https://fr.wingly.io/media/doc/en/EASA\\_140316.pdf](https://fr.wingly.io/media/doc/en/EASA_140316.pdf) (last visited May 20, 2018).

<sup>12</sup> See *2015 NTSB US Civil Aviation Accident Statistics*, NATIONAL TRANSPORTATION SAFETY BOARD (Nov. 6, 2017), <https://www.ntsb.gov/investigations/data/Pages/AviationDataStats2015.aspx>.

<sup>13</sup> *Id.*

<sup>14</sup> DAVID C. ISON, *Comparative Analysis of Accident and Non-Accident Pilots*, 4:2 J. of Aviation Technology and Engineering 20, 22 (2015), available at: <https://docs.lib.purdue.edu/cgi/viewcontent.cgi?article=1103&context=jate> (explaining over 70% of general aviation accidents “are attributed to pilot-induced causes”).

<sup>15</sup> *Id.* at 28 (“The mean number of flight hours is significantly lower among accident pilots, indicating that the lack of flight experience can have a significant negative impact on the ability to identify or avoid dangerous situations.”).

This increase in pilot participation will potentially exacerbate the dangers inherent in general aviation and lead to an increase in accidents and fatalities through an increase in the sheer number of passenger-laden general aviation flights. It is our view that certain experience levels and an instrument rating are necessary to counter the increased risks. In a way it is a “catch-22” situation, because cost sharing enables pilots to afford to become more experienced in the first place. Nonetheless, flying can be a dangerous activity, and the Committee does not believe that those who meet only the bare minimum qualifications – i.e., a private pilot certificate without an instrument rating and few flight hours logged – should be allowed to solicit the general public to participate in cost shared flights using the Apps until they gain some additional experience and skill that are likely to enhance the safety of flights offered to the public.

The Committee respectfully recommends that the Bill be revised to include heightened safety requirements for pilots in cost shared flights. Specifically, borrowing from existing heightened safety requirements in a different context, we recommend that participating pilots be required to meet the same standards that the FAA set in the past for fuel compensation of volunteer pilots who fly medical patients to critical destinations necessary for their care. One such authorization was issued by the FAA to the organization known as Patient Airlift Services, Inc. (“PALS”).<sup>16</sup> The PALS Authorization sets forth several heightened safety standards for participating pilots, including, but not limited to, requirements that a pilot obtain a second-class medical certificate, specified flight procedures such as pilot rest requirements, passenger briefings and activated instrument flight plans, a minimum number of hours flown, safety warning requirements to passengers, and an instrument rating for the pilot.

Additionally, general aviation pilots are currently not required under federal law to carry liability insurance.<sup>17</sup> The most commonly purchased general aviation liability insurance policies are \$1 million per occurrence with a \$100,000 per passenger sublimit and \$1 million per occurrence with no sublimit.<sup>18</sup> Due to the potential safety risk to the passengers in allowing for flight cost sharing using the Apps, it would be prudent for the Bill to impose similar minimum insurance requirements on participating pilots. For reference, PALS requires its pilots to carry a liability insurance policy at \$1 million per occurrence and \$100,000 per seat.<sup>19</sup>

#### IV. CONCLUSION

The Committee supports general aviation and would like legislation to pass that helps make flying more affordable to the general public while enhancing the vibrancy of general aviation. However, we believe that it is extremely important that pilots who solicit and fly members of the public for compensation (even mere cost reimbursement) meet certain enhanced

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<sup>16</sup> Patient Airlift Services, Inc., FAA Exemption No. 10294C, Regulatory Docket No. FAA-2011-0324 (May 5, 2017). It is available at <http://www.palservices.org/wp-content/uploads/2013/10/2017-FR-Exemption-10294C.pdf> (the “PALS Authorization”).

<sup>17</sup> *General Aviation Observations Related to Liability Insurance Requirements and Coverage for Aircraft Owners*, GAO-15-740, 1 (Sept. 9, 2015), available at: <https://www.gao.gov/assets/680/672376.pdf> (“[N]o federal requirements for liability insurance exists for GA aircraft owners and operators.”).

<sup>18</sup> *Id.* at 14.

<sup>19</sup> *For Pilots*, PALS, <http://www.palservices.org/for-pilots/> (last visited May 20, 2018).

safety standards to mitigate against the potential dangers. Accordingly, we respectfully suggest that the Bill require the FAA to impose heightened safety requirements on pilots who solicit the public to engage in cost shared flights via the Apps, such as those set forth in the PALS Authorization.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan D. Reitzfeld". The signature is fluid and cursive, with the first name "Alan" and last name "Reitzfeld" clearly legible.

Alan D. Reitzfeld, Chair

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