

March 19, 2018

The Honorable John Thune, Chairman
The Honorable Bill Nelson, Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510

The Honorable Jerry Moran, Chairman
The Honorable Richard Blumenthal, Ranking Member
Subcommittee on Consumer Protection, Product Safety, Insurance, and Data Security
United States Senate
Washington, DC 20510

Dear Chairman Thune, Ranking Member Nelson, Chairman Moran and Ranking Member Blumenthal:

We are writing to convey our support and gratitude for your leadership in convening tomorrow's hearing, "Update on NHTSA and Automaker Efforts to Repair Defective Takata Air Bag Inflators." The growing death toll on our Nation's highways and the record number of vehicle recalls due to serious safety defects combined with lackluster agency oversight and insufficient industry responses deserve the attention and focus this hearing will provide. As you continue to examine safety problems and remedial actions related to defective Takata airbags, we urge you to also recognize that consumers will likely be victims once again of industry misconduct and government missteps with the mass deployment of experimental autonomous vehicles (AVs) unless Congress acts. The unfortunate news that a pedestrian was killed late Sunday in a crash with an Uber being driven in autonomous mode should serve as a startling reminder that there are real world consequences to prematurely deploying AV technology. We urge you to take heed of this fatal incident during tomorrow's hearing and request that you delay consideration of the AV START Act (S. 1885) until the National Transportation Safety Board (NTSB) has completed its investigations of this recent Uber crash in Tempe, AZ that killed a pedestrian as well as the California crash involving a Tesla and a parked fire truck this past January. The NTSB may have findings and recommendations that should be incorporated into the legislation in addition to our proposals for legislative improvements. We respectfully ask that this letter be submitted into the hearing record.

In 2016, approximately 925 recalls involving more than 53 million vehicles were issued – the largest number in history. This includes deadly defects such as exploding Takata airbags, which have killed at least 20 people worldwide and faulty General Motor (GM) ignition switches that have claimed the lives of over 120 more victims. Unfortunately, these are not the only high profile examples of serious problems and cover-ups. Yet, the National Highway Traffic Safety Administration (NHTSA) still lacks crucial authorities and resources to serve as an effective "cop on the beat." Furthermore, NHTSA's budget is woefully underfunded and the agency is in desperate need of both a more robust budget and staff. The agency should be provided with imminent hazard authority to immediately intervene against widespread safety defects. The agency should also be given enhanced penalty authority including removing the cap on civil

penalties and adding criminal penalties to ensure manufacturers do not willfully put defective cars into the marketplace. Additionally, there is no requirement that used cars under open recall for a defect be remedied before being sold. With 38.5 million used cars sold in 2016, this is a huge and terrifying loophole that should be closed similar to congressional action related to rental cars.

We should not allow history to repeat itself especially one replete with industry malfeasance affecting millions of consumers and needlessly causing deaths and injuries. Now the same industry is asking the public and the government to “trust them” as they develop and deploy new driverless car technology. Alarming, the U.S. Department of Transportation (U.S. DOT) has been complicit in this approach. By issuing only “voluntary guidelines,” which are grossly inadequate and lack any sort of enforcement mechanism, the U.S. DOT has shirked its safety mission and regulatory duty. The stage is now set for what will essentially be beta-testing on public roads with families as unwitting crash test dummies.

It is for these reasons that it is critically important that improvements be made to the AV START Act. While some changes were made during the Committee markup, the bill still lacks essential safeguards that will assure sufficient government oversight, industry accountability and public safety. This legislation will set AV policy for decades to come. As such, it is imperative that strong protections for consumers and the public be included. We strongly urge the Committee to make the following modifications to the bill.

The size and scope of exemptions from federal safety standards must be narrowed. The AV START Act would allow for potentially millions of unproven AVs to be exempt from current federal motor vehicle safety standards (FMVSS) and sold to the public. The number of AVs that will be permitted to be exempt from FMVSS should be reduced and the time period between exemption “tiers” should be extended from 12 to 24 months to allow for adequate time to assess the real-world impact on the road safety performance of exempt vehicles. Further, any exemption from FMVSS that would diminish the current level of occupant protection should be prohibited. Moreover, the AV START Act would allow manufacturers to circumvent the exemption process and “turn off” vehicle systems such as the steering wheel and brakes without review and approval by NHTSA. This provision gives unfettered discretion to the industry to unilaterally make safety systems inoperable and should be eliminated.

Minimum performance requirements must be set to address critical issues with AVs.

Significant safety vulnerabilities need to be addressed through basic safety rules, and the AV START Act should direct NHTSA to issue the following standards.

Cybersecurity: Given the recent record of high-profile cyberattacks, protections must be put in place to curb potentially catastrophic hacks of AVs. A plan, as currently required by the bill, is insufficient and should be replaced with a directed rulemaking to be completed within three years.

Electronics: Motor vehicles and motor vehicle equipment are powered and run by highly complex electronic systems and will become even more so with the introduction of autonomous driving systems. As the Federal Aviation Administration (FAA) has carried out for aircraft, NHTSA must require minimum electronics standards for all cars. This

will be essential to ensure that the electronics that power and operate safety and autonomous driving systems function properly.

Driver Distraction and Engagement: In Level 2 and Level 3 vehicles that require a human to take control back from the AV system, the driver must be kept engaged. This need was underscored by the NTSB investigation into the fatal 2016 crash of a Tesla Model S, which found that the Autopilot system facilitated the driver's inattention and overreliance on the system. NHTSA must be directed to establish a minimum performance standard to address this problem.

Vision Test: AVs will need to be able to properly detect and respond to other vehicles, roadway infrastructure, pedestrians, bicyclists, law enforcement, and other common encounters during any given trip. NHTSA should require that AVs pass a "vision test" to guarantee that it can sufficiently "see" and react to its surroundings.

Consumers need basic safety information about AVs. As driverless cars are sold to the public, it is necessary that consumers know what they can, and cannot, do. Further, consumers must know from which vehicle safety standards their vehicle may be exempt. While the bill includes a rulemaking for consumer information at the point of sale and in the owner's manual, the final rule may not be issued for years. Consumers should immediately have access to basic safety information. Additionally, Level 2 vehicles must be included in the consumer information and safety evaluation report (SER) provisions, and the SERs should require documentation of manufacturers' assertions, not just descriptions, to ensure that NHTSA has enough information to accurately assess the technology. NHTSA should also be directed to establish a website that the public can use to find out safety information about AVs. And, all crashes involving an AV should be reported to NHTSA and that data should be made publicly available.

The varying needs of disabilities communities must be addressed. Though AVs are often touted as a panacea for mobility issues facing disability communities, they are certainly not a one-size fits all solution. Specifically, there is nothing in the AV START Act that would remove barriers to wheelchair users such as cost or vehicle design. The way that most vehicles are currently designed do not allow for the integration of a ramp or lift system or for a wheelchair to be properly or safely stored. Simply removing a driver or installing an automated system will not overcome these factors that inhibit mobility. Moreover, in the event of a crash or malfunction, people with certain disabilities may be particularly vulnerable.

States should not be preempted from acting to protect their citizens. The bill would preclude states from undertaking regulatory action even though the federal government has not yet done so. This is an unprecedented approach to preemption that should be rejected. Until U.S. DOT issues standards and regulations, states must retain their traditional legal authority to maintain public safety.

Compared to the complex systems that will be used in driverless cars, an airbag inflator is a relatively simple technology. As the Committee focuses on the deadly consequences of the failure of just one vehicle component, we urge you to make significant changes to the AV START Act to protect public safety. This Committee has already held five hearings on vehicle defects in the past four years that have revealed critical information about numerous NHTSA mistakes, repeated industry wrongdoing and the unacceptable but frequent breach of public trust.

We urge you to act to ensure that future tragedies like exploding Takata airbags are not repeated with the development and deployment of technology that is still in its infancy. Unfortunately the mistakes of recent history are all too fresh and should not be pushed aside in an inappropriate rush to limit NHTSA's authority to oversee the safety of autonomous vehicles.

Sincerely,

Jeff Solheim, 2018 President
Emergency Nurses Association

Bill Newton, Deputy Director
Florida Consumer Action Network

Melissa Wandall, President
National Coalition for Safer Roads
Founder, The Mark Wandall Foundation

Ralf Hotchkiss, Co-Founder
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cc: Members of the U.S. Senate Committee on Commerce, Science, and Transportation