



ADVOCATES
FOR HIGHWAY
& AUTO SAFETY

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ON

**“EXAMINING WAYS TO IMPROVE VEHICLE
AND ROADWAY SAFETY”**

BEFORE THE

COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE

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Introduction

Good morning Chairman Burgess, Ranking Member Schakowsky and members of the Subcommittee. I am Joan Claybrook, Consumer Co-chair of Advocates for Highway and Auto Safety (Advocates) and former Administrator of the National Highway Traffic Safety Administration (NHTSA). Advocates is a coalition of the leading public health, safety, and consumer organizations and the major property and casualty insurance companies and insurance agents that works together to prevent motor vehicle crashes, save lives, reduce injuries and contain costs through the adoption of highway and auto safety laws, programs and regulations. Advocates is a unique coalition dedicated to improving safety by addressing motor vehicle crashes as a public health issue.

According to the federal government, each year motor vehicle crashes claim more than 33,000 lives and millions more are injured at a cost to society of \$800 billion.¹ Unfortunately, deaths resulting from motor vehicle crashes are on the rise. The most recent data available from the National Highway Traffic Safety Administration (NHTSA) indicates that traffic fatalities in the first three months of 2015 have increased by 9.5 percent since last year.² Moreover, the National Safety Council estimates that motor vehicle deaths are up 14 percent over the first six months of 2015, representing the largest increase since 2007.³

These grim statistics come at a time when Americans are also facing a record number of recalls for safety-defective motor vehicles. In 2014, according to NHTSA, there were 801 separate vehicle recalls and service campaigns involving 63.7 million vehicles.⁴ So far in 2015, there have been 613 recalls covering over 40 million vehicles according to the agency.⁵

History has shown that when automakers place defective vehicles into the marketplace there are deadly consequences. In 2000, Congressional hearings and the media revealed hundreds of needless deaths and injuries caused by the Firestone/Ford defective tire fiasco. Again, in 2009, families were put at unacceptable risk due to the Toyota sudden acceleration problem. And, in the past two years the public has learned about the cover-ups and deception by General Motors (GM) executives who knowingly used faulty ignition switches that have been linked to at least 174 deaths with some reports placing the grim total above 200 fatalities,⁶ and many more injuries. Subsequently, the defective airbags manufactured by Takata have caused at least 8 deaths and 100 injuries.⁷ This tragic death toll from these defects that were not revealed to NHTSA as the law requires is equivalent to the lives that would be lost in a major aviation crash. If such an incident were the result of a faulty airplane part known to the manufacturer, there is no doubt that Congress would take swift, strong and immediate action to stop it from happening again.

Yet, why has the Congress not taken any meaningful action to address and assure correction of known safety problems contributing to this public safety crisis, despite ten Congressional hearings⁸ on vehicle safety defects issues during the 113th and 114th Congresses, of which six were held by the House Energy and Commerce Committee?⁹ The majority draft bill contains no significant solutions to deter future safety defects or hold corporations and individuals responsible for their wrongful actions. And, despite the release last June of the Department of Transportation's Inspector General's scathing report¹⁰ on NHTSA's inadequate efforts to identify safety-related vehicle defects, including the agency's failure to document its decisions to not

investigate potential safety issues, the Majority Bill fails to provide for judicial review of the agency's arbitrary rejection of defect petitions filed by the public.

In the face of so many recent disastrous safety recalls, some of them years after the cars were first sold, the public cries out for action by Congress. The time to act is now or we can surely expect the same shameful industry behavior, the same unacceptable agency shortcomings, and the same callous disregard for the safety of families. Is there no moral authority in this Congress to insist that the blood of innocent victims not be needlessly spilled?

NHTSA has a laudable history of saving lives through issuing vehicle safety standards and implementing behavioral initiatives, and in the last year has significantly improved its performance as the cop on the regulatory beat. However, there is still an unfinished safety agenda that needs to be addressed in the safety title of the multi-year, multi-modal surface transportation authorization bill Congress is currently debating. This bill will set the safety agenda for the next six years. During this time period it is expected that there will be nearly 2 million people killed on our roads and 12 million injured. This is roughly equivalent to the populations of Houston, Texas¹¹ and the Commonwealth of Pennsylvania¹² respectively. Why is the sanctity of life not job One in this Congress? Particularly when the proven life-saving record of NHTSA's vehicle safety programs is so significant.

Furthermore, the agency will certainly face many new future safety challenges as vehicle technology becomes more complex and continues to rapidly develop. While emerging in-vehicle technologies hold out the hope of improving safety on our nation's roads, many remain unproven

and others may very well contribute to the epidemic of distracted driving. Due to the swift advancement of these technologies, cyber security is also a growing and serious concern. Earlier this year, researchers funded by the U.S. Department of Defense remotely hacked into the control system of a driverless car including the braking and steering controls.¹³ It is essential that NHTSA, the agency charged with ensuring the safety of our vehicles and our drivers, be equipped with both the appropriate resources and personnel to confront the myriad of emerging issues presented by new technologies. It is almost incomprehensible that the entire vehicle safety program for the U.S. has a miniscule budget of only \$130 million, and it has barely increased over the last six years. It is both unfortunate and unnecessary that this agency is chronically underfunded by Congress even while its critical importance to public health and safety continues to expand. Congress has a moral obligation in the safety title of the six year reauthorization bill to give NHTSA the ability to do its job and to do it effectively. Our lives and those of our families as well as yours literally depend on it.

Advocates commends this committee for including in the safety title of the Moving Ahead for Progress in the 21st Century Act¹⁴, or MAP-21, several safety provisions directing agency regulatory actions on overdue lifesaving measures to improve motorcoach safety. These issues, identified in countless recommendations and crash investigations by the National Transportation Safety Board, languished for years, even decades, until specific deadlines for agency action were enacted in MAP-21. However, even now, deadlines for the issuance of a number of final rules and other safety actions required by the legislation are delayed and will not be completed on time, including final rules for roof strength, anti-ejection protection and rollover crash avoidance.¹⁵ These safety advances are critical as millions of passengers are transported by

motor coaches each year. In 2013, according the American Bus Association Foundation, the motorcoach industry in the United States and Canada provided 605 million passenger trips.¹⁶ These delays in issuing safety standards are, in part, a reflection of the agency's totally inadequate resources to comprehensively address its safety mission.

Lives Saved by Safety Systems and Programs

Laws passed by Congress and subsequent rules issued by NHTSA requiring vehicle safety standards and technologies have saved thousands of lives. NHTSA studies show that since 1975 motor vehicle safety technologies have saved over 400,000 lives.¹⁷ For example, frontal air bags saved 2,388 lives in 2013 and have saved nearly 40,000 people since 1991.¹⁸ In 2012, electronic stability control (ESC) saved an estimated 1,144 lives among passenger vehicle occupants.¹⁹ Child restraints saved the lives of 263 children age four and under in 2012 and more than 10,000 young children since 1975.²⁰ In addition to laws requiring safety technologies, other laws enacted by Congress to improve safety on our roads have been proven lifesavers. For example, the 21-year-old minimum drinking age law has saved 25,013 lives since enactment in 1984.²¹

A comprehensive NHTSA reauthorization bill with sufficient agency funding, stronger enforcement tools, enhanced consumer protections and commonsense and cost-effective safety requirements will allow NHTSA to fulfill its statutory mission to prevent death and injuries and economic losses from motor vehicle crashes.

Sufficient Resources for NHTSA are Essential

NHTSA's funding and staffing levels have suffered over the years. Today, 95 percent of transportation-related fatalities and 99 percent of transportation injuries²² occur on our streets and highways and yet, NHTSA receives only one percent of the overall U.S. Department of

Transportation (DOT) budget.²³ NHTSA is responsible for the safety of over 316 million Americans who drive or ride in or are around more than 269 million registered motor vehicles.²⁴ Motor vehicle crashes are the leading cause of death for all Americans ages five to 24, and the second leading cause of death among adults 25 to 34 years of age.²⁵ By any measure motor vehicle deaths and injuries are a major and costly public health epidemic. In order to advance safety gains and improve the agency's effectiveness in detecting, investigating and solving safety threats as well as meeting new expected challenges, a substantial increase in funding is essential and justified for NHTSA.

The current NHTSA budget for motor vehicle safety activities and research (including rulemaking, enforcement, research and analysis) is a small portion of NHTSA's overall budget. Current funding for NHTSA's Vehicle Safety and Research program was just \$130 million for Fiscal Year (FY) 2015.²⁶ This total is grossly inadequate in the face of the agency's mission and safety responsibilities that affect every American and every registered motor vehicle on our roads. Moreover, this paltry sum has barely increased over the past eight years.²⁷ When accounting for inflation over that same time period, NHTSA has effectively experienced a 4 percent decrease in funding for operations and research activities. The agency's Vehicle Safety and Research budget of \$130 million equates to NHTSA receiving less than one-half dollar for each of the 269 million registered vehicles on the road in the U.S.²⁸

While NHTSA's safety budget has shrunk in terms of its buying power, the number of vehicles on the road the agency must regulate has increased by 24 percent, from 217 million vehicles in 2000 to 269 million in 2013.²⁹ NHTSA remains woefully under-resourced and the agency's

ability to keep up with technology and crash and injury trends is imperiled by the lack of sufficient resources. This was made abundantly clear during the Toyota sudden acceleration crisis when the agency had few personnel with backgrounds and experience in electronics, and none with software experience.³⁰ This is unacceptable in light of the important lifesaving mission of this agency and the rapid increase in vehicle installation of electronic systems in motor vehicles.

A comparison of the NHTSA's Vehicle Safety and Research budget and the Federal Aviation Administration's (FAA) Aviation Safety (AVS) budget provides a clear example of the resource and funding disparities. From 2006 to 2013, aviation fatalities in the U.S. averaged 534 deaths annually over that eight year span, while motor vehicle fatalities averaged 35,907 annually over the same time period.³¹ (Chart #1). On average, motor vehicle fatalities are about 67 times greater than aviation fatalities. This may be understandable because the FAA AVS budget for Aviation Safety is so much larger than the NHTSA Vehicle Safety and Research budget. In the past eight years the FAA AVS budget increased from \$949 million (2006)³² to \$1.2 billion in (2014)³³ while the NHTSA Vehicle Safety and Research budget barely moved from \$119 million (2006)³⁴ to \$130 million (2015).³⁵ (Chart #2).

The NHTSA paltry increase of a meager \$11 million since 2006 is dwarfed by the increase of more than \$250 million in the FAA AVS budget over the same time period, and the FAA AVS budget increase since 2006 is itself nearly twice NHTSA's entire Vehicle Safety and Research budget. The comparison between aviation safety and vehicle safety, both in terms of budgets and results, are stark and disturbing. Moreover, the discrepancy between the amount spent per

fatality is stunning. (Chart #3). In 2013, based on the comparable budget figures, nearly \$3 million was spent per aviation fatality while less than \$5,000 was spent per motor vehicle fatality, and the gap is getting wider each year that NHTSA is not sufficiently funded to carry out its lifesaving mission. My father always told me that you get what you pay for, and we are paying for aviation safety and benefitting from that investment. However, the figures clearly show that NHTSA is being short-changed and has been for far too long. And, the public is paying the price with their lives and their wallets.

The agency budget for vehicle safety should reflect its important lifesaving and cost-saving mission. Laws and programs administered by NHTSA are responsible for saving at least an estimated 436,000 lives since 1975.³⁶ NHTSA authorization for vehicle operations and research should be tripled in acknowledgement of the daunting task the agency faces, the tremendous workload NHTSA undertakes to ensure the safety of millions of Americans every day of the year, and the success of its efforts.

NHTSA Must be Given the Authority to Pursue Relevant and Robust Penalties

The recent settlement of the investigation of the GM vehicles equipped with a defective ignition switch did not include any admission of criminal culpability or a civil fine sufficient to deter similar corporate misbehavior and offenses from occurring in the future. This unsatisfactory conclusion to an investigation involving a motor vehicle defect that has killed far too many Americans is a stark reminder of why NHTSA must be given the authority to levy larger monetary fines than currently capped in the law at a measly \$35 million as well as criminal penalties for such grave malfeasance and misconduct. Without this overdue legislative change,

the American public will continue to be the unknowing victims of manufacturers that place profits above public safety.

For far too long manufacturers have been selling deadly cars that kill and injure consumers without taking personal responsibility or suffering serious consequences. History will continue to be repeated unless Congress acts. In 2000, faulty Firestone tires were found to be responsible for numerous fatal crashes. In 2009 the sudden and unintended acceleration of Toyota vehicles killed and injured innocent motorists. Over the last two years, Congressional hearings revealed purposeful actions and decisions by corporate executives to hide and mislead NHTSA and the public about defective GM ignition switches and exploding Takata airbags. Individuals who knowingly permit vehicles with serious and deadly safety defects to be placed in the stream of commerce, and those who knew of the defect and concealed that knowledge should be held accountable for their actions. Without appropriate civil penalties and criminal sanctions to deter corporate misbehavior, nothing will change.

NHTSA is almost 50 years old³⁷ and should be given authority and powers commensurate with the agency's experience and safety mandate. This responsibility should be coupled with powers that permit the agency to fully perform its duties and allow the agency to exercise its enforcement authority to ensure the safety of vehicles on our streets and highways. For these reasons, the current cap on maximum fine amounts NHTSA may impose should be removed. For large multinational corporations the financial penalty imposed must be more than just a cost-of-doing business paid from petty cash.

The NHTSA must also be given the authority to pursue criminal penalties in appropriate cases where corporate officers who acquire actual knowledge of a serious product danger that could lead to serious injury or death and knowingly and willfully fail to inform NHTSA and warn the public. Under current federal law, many agencies already have authority to pursue criminal penalties including the Consumer Product Safety Commission, the Food and Drug Administration and the Securities and Exchange Commission. The lack of criminal penalty authority has hampered the agency's ability to deter automakers from safety defect recidivism.

Safety Provisions Essential to the Safety Title

Advocates supports amending several federal laws to provide NHTSA with enhanced authority to address existing safety challenges with 21st Century approaches that will allow the agency to leverage its resources to protect the American public. Advocates strongly supports the following legislation.

Vehicle Safety Improvement Act of 2015, H.R. 1181

We commend the Ranking Members of the House Energy and Commerce Committee and the Subcommittee on Commerce, Manufacturing and Trade Representatives Frank Pallone (D-NJ) and Jan Schakowsky (D-IL) as well as other Committee colleagues for sponsoring the Vehicle Safety Improvement Act of 2015, H.R. 1181, and strongly support its enactment. This legislation includes commonsense and cost-effective solutions to the numerous problems identified in hearings held by the Energy and Commerce Committee on the defective GM ignition switches and exploding Takata airbags. We urge that provisions in this bill be a part of the Committee's safety title.

Early Warning Reporting of Fatal Incidents by Manufacturers

The intent of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act³⁸ was to ensure that the DOT Secretary receives all reports of fatal traffic crashes that are alleged or proven to have been caused by a possible motor vehicle defect. However, under current NHTSA regulation, manufacturers need only report that a fatal crash occurred and do not have to provide the agency with copies that document the underlying claim, notice or articles that inform the manufacturer that a defect-related fatality involving one of its vehicles had taken place.³⁹ The Vehicle Safety Improvement Act of 2015 requires that for incidents involving a fatality, manufacturers must submit to the DOT relevant claims and documents that notified the vehicle manufacturer of the fatal incident.⁴⁰

Document and Information Transparency

Currently, NHTSA is not making documents and investigations of safety defects readily available to the public. The agency has prevented public access to information by overly classifying records as confidential or requiring the public to seek records through lengthy Freedom of Information Act (FOIA) proceedings. The Vehicle Safety Improvement Act of 2015 makes several important reforms to give the public better access to NHTSA documents. It requires:

- The NHTSA to amend its regulations to establish a presumption in favor of public disclosure of all early warning data unless otherwise exempt from disclosure under federal law. This would prevent the agency from misclassifying non-privileged factual information as confidential, and allow it to be released to the public.⁴¹

- Improvements to NHTSA’s early warning database in order to increase public access and availability so private individuals and researchers can assist the agency in identifying safety problems.⁴²

Imminent Hazard Authority

The Vehicle Safety Improvement Act of 2015 would also authorize NHTSA to take immediate action when the agency determines that a defect involves a condition that substantially increases the likelihood of serious injury or death if not remedied immediately. This “imminent hazard” power is needed to protect the public, by allowing the agency to direct manufacturers to immediately notify consumers and remedy the defect as soon as possible. Sadly, far too many Americans have been killed by a defect in their vehicle they did not know existed. As serious motor vehicle recalls continue to come to light, this critical reform will give NHTSA a powerful tool to remedy the danger posed by defective motor vehicles.

Pedestrian Protection

On average, nearly 4,500 pedestrians are killed and 68,000 are injured each year since the recent low point in pedestrian deaths in 2009.⁴³ This equates to an average of a pedestrian being killed every two hours and a pedestrian being injured every eight minutes.⁴⁴ Pedestrian fatalities have increased by 15 percent and the number of pedestrians injured has increased by 12 percent since 2009.⁴⁵ In 2013, the latest year of data available, there were 4,735 pedestrian deaths and 66,000 pedestrians injured.⁴⁶ Vulnerable populations make up a significant share of pedestrian fatalities. More than one-fifth of children under the age of 15 who were killed in traffic crashes were pedestrians.⁴⁷ Older pedestrians (age 65+) accounted for 19 percent (896) of all pedestrian fatalities in 2013.⁴⁸ Moreover, the fatality rate for older pedestrians (age 65+) was 2 per 100,000 population – higher than the combined rate for all the other ages under 65 (1.4).⁴⁹ In 2010,

pedestrian crashes resulted in \$65 billion in comprehensive costs.⁵⁰ The Vehicle Safety Improvement Act of 2015 directs DOT to establish standards for motor vehicles in order to reduce the number of injuries and fatalities suffered by pedestrians who are struck by motor vehicles. Such a standard could protect especially vulnerable pedestrian populations, including children, older adults, and individuals with disabilities. Being hit by a car does not have to be a death sentence. Advocates and other safety groups have been urging Congress to require the DOT to issue a safety standard for the hood and bumper areas of motor vehicles in order to reduce the severity of injuries suffered by pedestrians and bicyclists that frequently result in death and lifelong disabilities. Such a standard has been in place in Europe for years. Just as added padding and restraint systems provide occupant protection inside the vehicle in the event of a crash, design improvements to the hood and bumper, which are already available on some makes and models sold in the U.S., can afford pedestrians and bicyclists protection on the outside of the vehicle in the event of a crash.

Eliminate the Sale of Used Cars with Open Recalls

Federal law prohibits automobile dealers from selling new vehicles that are subject to a safety recall until they are fixed.⁵¹ However, there is no such restriction on the sale of used vehicles even when they have the exact same defects such as defective breaks, faulty steering, or malfunctioning air bags and seat belts. The Vehicle Safety Improvement Act of 2015 would close this dangerous loophole.

Consumers who cannot afford to purchase a new vehicle or who simply seek the value of purchasing a used auto deserve the same protections against safety defects afforded to new car buyers. In fact, it is not only purchasers of unsafe used vehicles that are endangered by this lack

of a common sense protection for consumers, but also all those with whom they share the roads. The problem of selling these dangerous used cars is widespread. According to CarFax, the company that provides vehicle history reports to the public, 5 million vehicles with an open recall were bought and sold by consumers in 2014.⁵²

Prohibit Regional Recalls

The Vehicle Safety Improvement Act of 2015 will also eliminate so-called “regional recalls.” Due the transient nature of motor vehicles and the fact that the American public is highly mobile, recalls limited to certain areas of the country exclude numerous vehicles that should be subject to the same recall and remedy, leaving many Americans needlessly at risk. This dangerous and ill-advised administrative limitation on recalls should be ended immediately.

Additional Motor Vehicle Safety Provisions that are Needed

Protect Consumers by Prohibiting Rental Car Companies from Leasing Consumers Cars Under Recall

Advocates supports the passage of The Raechel and Jacqueline Houck Safe Rental Car Act of 2015, H.R. 2198, of which a modified version is included in the Developing a Reliable and Innovative Vision for the Economy Act (DRIVE) Act passed by the Senate in July.⁵³ This legislation will ensure recalled rental vehicles are fixed before a consumer gets behind the wheel. The measure is named in memory of Raechel and Jacqueline Houck, daughters of Carol (Cally) Houck, who were killed in a recalled but uncorrected rental car due to a defect in a steering component that caused an under-hood fire and led to the loss of steering control. The car had been recalled but had not been repaired before it was rented to the sisters, Raechel (age 24) and Jacqueline (age 20). The intent of the bill is to prevent future tragedies and to allow consumers who rent cars to do so with confidence that the vehicles do not have safety defects subject to a safety recall. The legislation is supported by Carol (Cally) Houck, Consumers for Auto

Reliability and Safety, Center for Auto Safety, Consumer Action, Consumers Union, Consumer Federation of America, National Association of Consumer Advocates, Trauma Foundation, Advocates for Highway and Auto Safety, and others.

Judicial Review of Final Agency Actions

As already noted, the DOT Inspector General in its June 2015 report to Congress on NHTSA's efforts to identify vehicle defects, found that the agency does not always document its decisions not to investigate potential safety issues.⁵⁴ The agency's decisions to decline to fully investigate reported defect problems, to deny defect petitions and its basis for opening and closing preliminary investigations and engineering evaluations must be documented and explained to the public. Moreover, these final agency decisions should be subject to judicial review which is the standard practice for all other final agency orders.

Lobbying and Communications "Cooling-Off" Period

The federal agency tasked with ensuring that manufacturers meet federal regulations should never show bias or even give the appearance of partiality. Thus, except for providing testimony, former DOT and vehicle safety employees should be prohibited, for a period of one year, from engaging in any communication regarding vehicle safety matters on behalf of a regulated manufacturer where the former DOT or NHTSA employee seeks official agency action. This important reform will give the public confidence that NHTSA's first priority remains protecting the American public.

No Child Left Behind in the Car

All too often adults leave infants and young children in child restraint systems in the rear seats of passenger vehicles tragically leading to death. Exposure of young children, particularly in extreme hot and cold weather, leads to hyperthermia and hypothermia that can result in death or

severe injuries. In 2014 alone, 30 children in the U.S. died of heatstroke.⁵⁵ Over the period 1998 to 2014, 636 children were killed from heatstroke.⁵⁶ Of these needless deaths, 53 percent occurred when children were forgotten in the vehicle.⁵⁷ This risk of heatstroke is higher among children than adults because a child's body temperature heats up three to five times faster and risk is exacerbated if the child is too young to communicate.⁵⁸

These inadvertent deaths can be avoided by equipping vehicles with sensors to detect the presence of the child and sound a warning at the time the driver locks the vehicle with a child inside. This is not rocket science. Similar warning features currently remind drivers when they have left the key in the ignition, left the headlamps on, and when a door or trunk is open while the vehicle is in motion.

Draft Majority Bill-Unsafe Under Any Standard

The bill released by the Committee's majority (Majority Bill)⁵⁹ does not seriously advance safety in any significant or meaningful way. Additionally, the bill seriously dilutes critical environmental protections that control vehicle emissions and promote fuel economy. The Majority Bill also wastes taxpayer dollars by turning NHTSA into the National Highway Traffic *Study* Administration by directing the federal safety agency to divert its inadequate resources and staff time to engage in 16 separate burdensome studies or reports.⁶⁰ There are also several provisions which put the auto industry in the driver's seat instead of the regulatory agency.

The Majority Bill is long on burdensome and delaying studies and short on direct actions that will actually reduce the carnage on our roads, protect consumers from deadly defects, prevent purposeful industry cover-ups and deceit and address the funding and staffing deficit at NHTSA.

This draft bill fails to increase the cap on civil penalties that NHTSA may pursue, or provide for criminal sanctions for manufacturers that knowingly introduce a defective vehicle into the marketplace even as the massive number of vehicle safety recalls continues unabated. Instead, the discussion draft of the Improving Recall Tracking Act⁶¹ directed NHTSA to establish a needless vehicle identification number (VIN) database that will do little to combat the endless flood of vehicle recalls confronting American motorists.

In addition, the Majority Bill fails to provide any tangible improvements in vehicle safety, such as prohibiting used cars with open recalls from being sold to unsuspecting consumers, or providing NHTSA with imminent hazard authority to expedite the grounding of vehicle models that present a clear and present public danger. To the contrary, the Majority Bill seeks to exempt hundreds, possibly thousands of replica vehicles from Federal Motor Vehicle Safety Standards (FMVSSs) for lifesaving devices such as air bags and seat belts.

Manufacturers already consult databases maintained by private companies to contact customers regarding vehicle recalls. Thus, not only is a VIN database maintained by NHTSA unnecessary, but it will also cost untold taxpayer dollars and will swallow precious agency resources at a time when the agency is badly underfunded. In addition, as the recent scandal regarding the data breach at the Office of Personnel Management demonstrates, federal databases containing sensitive personnel information about millions of Americans are ripe targets for computer hackers at a time when the federal government seems unable to thwart such attacks. Requiring NHTSA to maintain a VIN database is nothing more than a bad solution in search of a problem that does not exist.

Furthermore, under the Majority Bill, it will take even longer for the public to learn of dangerous recalls. Section 202 of the bill delays notification to the public of recalls until NHTSA is in receipt of all the VINs subject to the recall.⁶² Failing to promptly notify the American public about dangerous defects in their vehicles can have deadly consequences. The tragic death toll from the faulty General Motors Corp. (GM) ignition switch, and the exploding Takata air bags, may have been lessened if drivers had learned earlier that their vehicle contained a fatal defect. As the Takata defect has proven, the number of vehicles subject to a recall can expand over a matter of months. Delaying notification to the public of a safety recall when the number of affected vehicles may change is misguided and dangerous. Moreover, Section 202 also inappropriately requires NHTSA to draft any notice of a vehicle defect or noncompliance in coordination with the manufacturer prior to publishing the notice. This provision dilutes NHTSA's role as an objective regulatory agency charged with enforcing vehicle safety recalls.

The Majority Bill also contains a number of exemption provisions that will diminish public safety on our highways. For example, Section 404 of the Majority Bill provides a blanket exemption from the FMVSS for vehicles intended for testing or evaluation by manufacturers.⁶³ This broad exemption applies to an unlimited number of vehicles and, unlike the current application process, will have little or no oversight from federal authorities to ensure these vehicles do not pose any unreasonable or unnecessary risk to the American public.

Under current law, vehicles that are introduced into interstate commerce for testing or research may apply for an exemption from the FMVSS.⁶⁴ A regulatory process already exists by which

manufacturers who produce as many as 10,000 vehicles a year can seek exemption for up to 2,500 vehicles a year on the basis of substantial economic hardship, development or field evaluation of a new safety feature, or development or field evaluation of a low-emission vehicle.⁶⁵ NHTSA should retain this oversight responsibility to ensure exemptions from FMVSS do not unreasonably place the public and safety at risk. Section 404, if enacted, would provide manufacturers with a blanket exemption from all safety standards without any process for ensuring that a manufacturer will provide or even attempt to provide the bare minimum level of safety which highway users should be afforded.

Equally egregious is Section 405 of the Majority Bill which directs NHTSA to establish a program allowing any number of low volume motor vehicle manufacturers to produce 500 “replica” motor vehicles (replicas of cars produced not less than 25 years ago) annually without complying with the applicable federal motor vehicle safety standards. As noted above, examples of lifesaving safety standards from which these vehicles would be exempt include frontal- and side-occupant impact protection, effective seat belts, and airbags, among others. Under this provision, potentially thousands of “replica” motor vehicles without the proper safety protections as required by federal law could be on American roads. The safety implications are very serious for vehicle owners, their passengers and other motorists on the road who are traveling at speeds of 65 miles per hour or more, in the event they are involved in a crash.⁶⁶

The Majority Bill creates a breathtaking double standard in favor of the industry at the expense of consumers. Section 406 mandates that instances where the industry has failed to follow voluntary guidelines issued by U.S. DOT cannot be used as evidence of liability in a civil

action.⁶⁷ However, industry may use conformity with those same guidelines as evidence of compliance with federal regulations in the same civil action.⁶⁸ This provision attempts to shield wrongdoing, undermine corporate accountability and hinder consumers at a time when deadly vehicle recalls are proliferating.

Section 501 of the Majority Bill establishes an Advanced Automotive Technology Advisory Committee “to develop safety performance metrics for advanced automotive technologies and connected vehicle technologies originally installed in motor vehicles.”⁶⁹ This committee will be charged with developing standards that will be used as the basis for safety ratings in the New Car Assessment Program (NCAP).⁷⁰ Such a committee, if stacked with industry representatives, should not be able to dictate to the NHTSA what standards should be used as part of NCAP. In addition, such a procedure undercuts the regulations relating to NCAP that are already in place.

The Majority Bill also fails to adequately address the serious and evolving threat of cyber security as it relates to highway safety. The possibility that a criminal could hack their car is a frightening prospect to every American, yet the majority bill seeks to protect the auto industry, rather than protect the American public. Section 301 of the Majority Bill⁷¹ directs manufacturers to develop a privacy policy but fails to ensure that those policies will include sufficient protections and safeguards for the public. Nevertheless, the bill sweetens the provision for manufacturers by providing an exceedingly broad safe harbor protection. Any industry-developed privacy policy, no matter how inadequate, would exempt manufacturers from being sued for unfair or deceptive acts under Section 5 of the Federal Trade Commission Act which is intended to protect consumers.⁷²

Similarly, Section 302 of the Majority Bill provides only civil penalties for individuals that hack into a vehicle even when such crimes may result in death or serious injury to the victim. By contrast, Section 4103 of the GROW America Act provides criminal penalties when such acts constitute a “reckless disregard for the safety of human life.”⁷³ Moreover, the Automotive Cybersecurity Advisory Council established under Section 303 of the Majority Bill to develop “cybersecurity best practices,” is mandated to have at least 50 percent of its members drawn from industry, and only one representing consumers.⁷⁴ Thus, the committee membership is obviously unbalanced and will do little to reflect the concerns of consumers facing the very real threat of having their car hacked and their privacy data breached.

Additionally, the Majority Bill seeks to give manufacturers emission and fuel economy credits for safety technologies that are already installed in many vehicles.⁷⁵ This provision will not serve as an effective incentive for automakers to install new safety technologies in their vehicles but will ensure that in the future vehicles will emit even more pollution into the air. At a time when Volkswagen, reputedly the largest automaker in the world, recently admitted to Congress that it placed a device in millions of cars worldwide to intentionally defeat current emission standards,⁷⁶ this Committee should be seeking ways to improve fuel economy and emissions standards, not weaken them. We know that the auto industry is capable of building safe, fuel efficient and clean cars without Congress providing unnecessary and unseemly trade-offs.

While the Majority Bill does include two incremental improvements regarding the retention of records by automakers and the time period for when a consumer may obtain a recall remedy at

no charge, these provisions should be strengthened in line with the provisions in the H.R. 1181, Vehicle Safety Improvement Act of 2015. While Section 403 of the Majority Bill requires manufacturers to retain records related to safety issues for a period of not less than 10 calendar years,⁷⁷ the Vehicle Safety Improvement Act of 2015 requires such records to be retained for 20 calendar years.⁷⁸ In addition, the Vehicle Safety Improvement Act of 2015 would eliminate the 10 year cap on remedies that are available to a consumer to fix a recall at no charge,⁷⁹ while the Majority Bill only extends the cap to 15 years.⁸⁰ These provisions in the Vehicle Safety Improvement Act of 2015 provide the sensible and optimal protections for consumers and should be adopted.

I do commend the majority bill for including some safety positive provisions. These include Section 402 that requires the agency to complete research and potentially issue a rule on rear seat crash worthiness, Section 102, corporate responsibility for NHTSA reports, and Section 201 which requires NHTSA to upgrade its website to allow the public better access to agency records. Finally, Section 204 of the Majority Bill rightly restricts a manufacturer from escaping its recall obligations by filing for bankruptcy under Chapter 7 of the bankruptcy code.⁸¹ This provision provides an important protection for a consumer by ensuring that their vehicle will be remedied no matter the legal status of the manufacturer that provided them with a defective product.

Conclusion

There are no acceptable excuses for delaying any longer the adoption of lifesaving laws, consumer protections, increased penalties for corporate misbehavior, strengthening NHTSA's authority and resources, and improved vehicle safety standards that can save lives and reduce

injuries, especially when sensible solutions are at hand as we have highlighted today in our testimony.

Thank you for the opportunity to testify before you today and I am pleased to answer your questions.

Endnotes

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