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2 HIF126.170

3 HEARING ON H.R. \_\_\_\_\_, THE MOTOR VEHICLE SAFETY ACT OF 2010

4 THURSDAY, MAY 6, 2010

5 House of Representatives,

6 Subcommittee on Commerce, Trade, and Consumer Protection

7 Committee on Energy and Commerce

8 Washington, D.C.

9       The Subcommittee met, pursuant to call, at 11:07 a.m.,  
10 in Room 2322 of the Rayburn House Office Building, Hon. Bobby  
11 Rush [Chairman of the Subcommittee] presiding.

12       Members present: Representatives Rush, Sarbanes,  
13 Sutton, Stupak, Green, Barrow, Space, Braley, Dingell, Waxman  
14 (ex officio), Whitfield, Stearns, Gingrey, Scalise, Latta,  
15 and Barton (ex officio).

16       Staff present: Michelle Ash, Chief Counsel; Anna Laitin,  
17 Professional Staff; Angelle Kwemo, Counsel; Timothy Robinson,  
18 Counsel; Bruce Wolpe, Senior Adviser; Karen Lightfoot,

19 Communications Director; David Kohn, Press Secretary;  
20 Elizabeth Letter, Special Assistant; Will Cusey, Special  
21 Assistant; Daniel Hekier, Intern; Althea Gregory, Intern;  
22 Brian McCullough, Minority Senior Professional Staff; Shannon  
23 Weinberg, Minority Counsel; Robert Frisby, Minority FTC  
24 Detailee; and Sam Justice Costello, Legislative Analyst.

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25           Mr. {Rush.} The Subcommittee on Commerce, Trade, and  
26 Consumer Protection will now come to order. This chair  
27 recognizes himself for 5 minutes for the purposes of opening  
28 statement but before my 5 minutes begin, I just want to take  
29 a moment to welcome all those who are witnesses today and  
30 those who are viewing this from the position of the gallery  
31 or those who are sitting in the audience today. Now the  
32 chair recognizes himself for 5 minutes for the purposes of  
33 opening statement. The focus of today's hearing is the Motor  
34 Vehicle Safety Act of 2010 draft legislation. Two months ago  
35 we assessed the National Highway Traffic Safety  
36 Administration's functionality and effectiveness. The  
37 unfortunate accident resulting from unintended acceleration  
38 revealed to us the need to modernize NHTSA. The laws were  
39 written in the 1960s and 1970s. They do not reflect today's  
40 global marketplace.

41           And I want to take a moment to comment Chairman Waxman  
42 for his leadership in drafting this important piece of  
43 legislation. There are five suggestions that this  
44 legislation will attempt to address. It energizes the agency  
45 and with the expertise and technology that is so in need to  
46 achieve its primary goal while responding to today's rapidly  
47 advancing electronic technology that is really at the heart

48 of all the new vehicles on America's highways. Secondly, it  
49 promotes safety and innovation by establishing tougher  
50 baseline of standards that better protect consumers.  
51 Certainly, it enhances the enforcement mechanism by  
52 increasing the agency's authority to remove vehicles from the  
53 road if these vehicles pose a serious, imminent hazard and if  
54 the manufacturers do not on their own take appropriate  
55 action.

56       Next is it increases transparency and accountability.  
57 The concept of transparency and accountability are pre-  
58 requisites for any effective policy regulation. And, lastly,  
59 we reform the safety standards for consumers with this piece  
60 of legislation. We also protect our industries and the  
61 American worker by helping to save jobs and by allowing the  
62 industry and the American workers to continue to regain  
63 consumer confidence in their brand as they continue to build  
64 and sell cars and to generally help America's auto industry  
65 stay competitive in the global economy. This is what the  
66 proposed Motor Vehicle Safety Act of 2010 is attempting to  
67 do. We will get it done. Some of the public will question  
68 the need for new legislation to improve the safety and  
69 quality of vehicles. I for one, and I am sure that other  
70 members of this subcommittee join me, strongly, strongly,  
71 strongly disagree with those who take that kind of position.

72           Despite the fact that I am sure that automakers are  
73 attempting to do all they can to win back consumers and  
74 improve the safety standards and equipment that is located  
75 and found in their vehicles, I think it is more reasonable to  
76 say that perhaps the horrific unintended acceleration  
77 incidents that have been well-documented before this  
78 subcommittee and others might not have happened if we had had  
79 the appropriate regulations already on the books. It is my  
80 firm belief that this legislation and the reforms that it  
81 mandates are long overdue. Simply put, it is time to act,  
82 and the time to act is now.

83           Before I yield back the balance of my time, I want to  
84 thank the witnesses again for taking the time out of their  
85 schedule to advise members of this subcommittee. The draft  
86 legislation that we are examining today is the result of a  
87 series of consultations with stakeholders from the consumer  
88 groups and also from manufacturers and also from the  
89 Administration. We all have the same objective, which is to  
90 save lives, prevent injuries, and reduce risk through  
91 technology, education, improved safety standards, and through  
92 vigorous, robust enforcement. It has been a selective and  
93 constructive effort, and I am looking forward to hearing from  
94 our witnesses again. Thank you, and with that I yield back  
95 the balance of my time. And I recognize now the ranking

96 member, Mr. Whitfield, for 5 minutes for the purposes of an  
97 opening statement.

98 [The prepared statement of Mr. Rush follows:]

99 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|

100 [The Draft Legislation follows:]

101 \*\*\*\*\* INSERT 7 \*\*\*\*\*

|

102           Mr. {Whitfield.} Thank you very much, Mr. Chairman.  
103 This is our third hearing on NHTSA and auto safety issues  
104 including an oversight subcommittee hearing into the Toyota  
105 recalls. And today we are going to hear testimony about the  
106 discussion draft for the Motor Vehicle Safety Act of 2010,  
107 and we look forward to that testimony. During those previous  
108 hearings, we learned that we now are in the safest period of  
109 automobile history. NHTSA's report for 2009 revealed the  
110 lowest fatality rate on record, at one point, 1/6 fatality  
111 per 100 million vehicle miles traveled. Thirty years  
112 earlier, 1979, that number was 3.34 fatalities per 100  
113 million vehicle miles traveled. We have more cars and more  
114 drivers on the road now than we did then.

115           Today we have more than 255 million vehicles registered,  
116 and they travel over 2.9 trillion miles per year. Thirty  
117 years ago we had 157 million vehicles registered traveling  
118 1.5 trillion miles per year. These are impressive statistics  
119 and it speaks volumes about not only the job that NHTSA has  
120 done but it also speaks to the innovation of automobile  
121 manufacturers. And we also know that 90 percent of all  
122 accidents are caused by human error. Now today we are  
123 looking at this draft and this draft requires 7 specific  
124 safety mandates on manufacturers. It increases penalties

125 exponentially. It expands the reporting data manufacturers  
126 must turn over to NHTSA without confidentiality protections.

127 And the thing that is most troublesome about this is  
128 that this is being proposed without taking into account what  
129 industry is already doing, what safety reviews are currently  
130 underway, and most significantly, whether this will result in  
131 any real safety benefits that saves lives. As a matter of  
132 fact, I don't think that we really even know the cause of the  
133 Toyota acceleration problem. All of us want our cars to be  
134 safer. We want regulators to have the appropriate tools to  
135 be an effective regulator. And Mr. Strickland testified in  
136 his last appearance before us that he had the necessary  
137 expertise to deal with this issue. And so I am very much  
138 concerned about the breadth of this bill, the width of this  
139 bill, the mandates in this bill.

140 I am particularly concerned about the unilateral  
141 authority for the administrator to stop production, sale,  
142 distribution, or even importation with no time limits, and I  
143 also think there is a lack of due process for manufacturers  
144 that may be hit with one of these mandatory stop orders. So  
145 I look forward to the testimony today. We have a lot of  
146 unanswered questions. I know this will be a productive  
147 hearing, and I might just also say another part of this bill  
148 that I am pretty much concerned about is that it gives

149 authority to bring fines of up to \$250 million against  
150 corporate executives for data that they submit to NHTSA. So  
151 we need to explore this closely, and I am confident that at  
152 the end of this hearing, at the end of this process, we will  
153 come up with a system that will improve highway safety and  
154 will be productive for the American people. Thank you.

155 [The prepared statement of Mr. Whitfield follows:]

156 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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157           Mr. {Rush.} Thank you. The chair now recognizes the  
158 chairman emeritus of the full committee, the dean of the  
159 house, my friend from Michigan, Mr. Dingell, for 5 minutes  
160 for the purposes of opening statement.

161           Mr. {Dingell.} Mr. Chairman, I will waive my opening  
162 statement. It is an excellent one and I would urge everybody  
163 to read it. However, in the interest of time of the  
164 committee, I would ask unanimous consent that it be inserted  
165 into the record, and I thank you for your courtesy and  
166 commend you for holding this hearing.

167           [The prepared statement of Mr. Dingell follows:]

168 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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169           Mr. {Rush.} So ordered. Now the chair recognizes the  
170 gentleman from Michigan, Mr. Sarbanes, for 2 minutes for the  
171 purposes of opening statement.

172           Mr. {Sarbanes.} Thank you, Mr. Chairman, for holding  
173 the hearing. I appreciate it very much. I look forward to  
174 the testimony today on what this legislation can offer to the  
175 National Highway, Traffic, and Safety Administration, both in  
176 terms of resources and in terms of extra authority. Of  
177 course, you know, Americans will make reasonable assumptions  
178 that we are protecting them until an incident occurs and then  
179 it points out some of the thin places in the oversight and  
180 regulation that we have, and we got to make sure that the  
181 agency is responsible for that oversight, have the tools they  
182 need, and have been given the charge that they deserve in  
183 order to provide that protection.

184           I am particularly interested in the testimony today that  
185 I hope will address the need or the issue of technology  
186 getting ahead of our oversight and how we have to keep up  
187 with that, and particularly the enhanced expertise when it  
188 comes to electronics within the department because of course  
189 that is where all the cutting edge technology has taken the  
190 automobile fleets. So I am looking forward to the testimony.  
191 I appreciate the hearing, and I yield back my time.

192 [The prepared statement of Mr. Sarbanes follows:]

193 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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194           Mr. {Rush.} The chair now recognizes the ranking member  
195 for the full committee, my friend from Texas, Mr. Barton, for  
196 5 minutes for the purposes of opening statement.

197           Mr. {Barton.} I thank the distinguished chairman. It  
198 is good news that you appear to want to move in a regular  
199 order process on this piece of legislation. Those of us on  
200 the Republican side, at least myself, have just now seen it  
201 or we saw it last week, so it is going to take us a while to  
202 digest it, Mr. Chairman. But you have shown that you want to  
203 use the subcommittee process in terms of hearings and markup  
204 before we go to full committee, and I sincerely appreciate  
205 that. There are some provisions in the proposed legislation  
206 that make sense making the NHTSA consumer complaint database  
207 more user friendly. It is certainly something that I can  
208 support. I don't know that we have to have an act of  
209 Congress to make that happen, but I do support the concept.

210           I don't have an objection to targeting resources to  
211 improve the agency's technical capability. It is obvious  
212 that in this day and age we need our regulatory authorities  
213 to have as much technical competence as it is possible to  
214 have. Standardizing the brake override function is something  
215 that we certainly support. There are provisions in the  
216 proposed legislation that are troublesome. Ranking

217 subcommittee member Whitfield mentioned some of those. I  
218 echo his concerns. I also echo or at least state that it  
219 appears this legislation in its current form would increase  
220 taxes. It would give the government some authority that I am  
221 not sure it deserves and some of the penalties to me seem  
222 like overkill.

223 I don't believe this is the time, Mr. Chairman, to just  
224 pile on the automobile industry or at least potentially pile  
225 on because they are facing tough times. On the issue of  
226 unintended acceleration, it is obvious that this is something  
227 that we still don't have an answer for with regards to what  
228 happened at Toyota. NHTSA has found, I understand, that  
229 Toyota has violated some of the reporting requirements of the  
230 TRED Act. They are not resubmitting its reports of  
231 unintended acceleration in a timely manner. NHTSA is a  
232 consequence of that and other Toyota issues, has assisted  
233 Toyota with the largest civil penalty ever assessed by  
234 itself, a little over \$16 million. Six million Toyota cars  
235 have been recalled in the United States and adjustments have  
236 been made.

237 I am not sure, Mr. Chairman, those adjustments really  
238 address the problem, but at least Toyota did make an attempt  
239 to make some of those adjustments. We still don't have a--at  
240 least if we do, I don't know it, a concrete explanation of

241 what has actually happened and why it happened. We do have  
242 two separate panels that are looking into the issue. I am  
243 prepared to wait for those expert studies to be presented to  
244 the committee before we begin the process of mandating new  
245 requirements that almost certain will raise cost and may be  
246 of questionable safety benefit although if the evidence is  
247 conclusive that there is a real safety benefit certainly  
248 myself and the other Republicans are going to be supportive  
249 of that.

250       We have specific concerns with the draft legislation,  
251 Mr. Chairman. It mandates that all vehicles be equipped with  
252 a data event recorder. I have a new hybrid, Tahoe hybrid,  
253 made in my congressional district in Arlington, Texas, and it  
254 has one of these recorders. I can see why you would want to  
255 have it especially if your vehicle is in an accident and you  
256 are accused of being at fault. One of the workers at the  
257 plant that gave a test drive in my new vehicle said that he  
258 has one on his and was able to point out in an accident that  
259 he was involved in because of the data recorder that he was  
260 not at fault and he had the data to back it up. So I  
261 certainly see that there is some value to these devices but  
262 we also have some privacy concerns, and we want to make sure  
263 that people know that the data recorder is in their vehicle  
264 and how it is going to be used.

265           As I said, the civil penalties in the draft legislation  
266 are excessive. Civil penalties of \$5,000 per day are capped  
267 at \$16.4 million. The draft legislation would raise that to  
268 \$25,000 per violation and remove the cap. We certainly need  
269 to investigate that, Mr. Chairman. My time has almost  
270 expired, so I have got a few more things to say, but I will  
271 put that in the record. Again, kudos to you and Chairman  
272 Waxman for agreeing to go through regular order. If  
273 Republicans are actually included in the drafting and in the  
274 witness process if there is a need to legislate, I am sure  
275 that Mr. Whitfield will be very interested in working with  
276 you and I with you and Mr. Waxman to try to do what is  
277 responsible. Thank you for holding this hearing.

278           [The prepared statement of Mr. Barton follows:]

279           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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280           Mr. {Sarbanes.} [Presiding] Thank the gentleman for  
281 his comments. We have been joined by the chair of the full  
282 committee, Chairman Waxman. The chair will yield 5 minutes  
283 to Chairman Waxman.

284           The {Chairman.} Thank you very much, Mr. Chairman. I  
285 want to thank Chairman Rush for convening the hearing on this  
286 discussion draft of the Motor Vehicle Safety Act of 2010, and  
287 for being a co-author of the bill. This may be the most  
288 important vehicle safety bill in a generation. The  
289 objectives of this bill are to improve vehicle safety and  
290 strengthen the National Highway Traffic Safety  
291 Administration. With new safety standards requirements for  
292 data recorders, expertise at NHTSA, we hope to restore  
293 consumers faith in the cars they drive and the companies that  
294 make those cars. With new resources and tools available, we  
295 hope NHTSA will be able to critically evaluate the claims  
296 auto manufacturers make about the operation of their vehicle,  
297 conduct more thorough defect investigations and bring about  
298 timely recalls when necessary.

299           This legislation is what I call a win, win, win. It is  
300 a win for the public by protecting vehicle safety, a win for  
301 the auto industry by restoring confidence in their vehicles,  
302 and a win for the National Highway Traffic Safety

303 Administration by giving the agency tasked with overseeing  
304 vehicle safety programs the resources to do the job. The  
305 recent Toyota recall severely rattled the driving public.  
306 This legislation meets the public's urgent concerns. The  
307 bill has four components. First, it improves electronics and  
308 expertise at the National Highway Traffic Safety  
309 Administration and calls for new safety standards to require  
310 brake overrides, to prevent pedal entrapment, and to meet  
311 performance requirements for electronic vehicle components.

312         New vehicles would also be required to be equipped with  
313 robust event data recorders to assist defect investigators in  
314 accident reconstruction. Second, it provides NHTSA with new  
315 enforcement authorities including lifting the cap on civil  
316 penalties and granting the agency the authority to order a  
317 recall if the agency identifies an imminent hazard of death  
318 or serious injury. Third, it requires greater transparency  
319 of early warning data submitted by companies to help NHTSA  
320 identify defect trends and restores judicial oversight of  
321 agency decisions to deny a defect petition. And finally, the  
322 bill addresses NHTSA's chronic resource efficiency for  
323 vehicle safety programs with an increased authorization of  
324 appropriations and the introduction of a modest user fee.

325         In addition to Chairman Rush, I want to thank Chairman  
326 Dingell for his contributions to this draft. I know that

327 Chairman Dingell still has concerns about the bill, but he  
328 and his staff made many helpful and important contributions  
329 to the draft language, and it is my goal that when we report  
330 this bill from full committee Chairman Dingell and I will  
331 support the final product. I also hope that we will be able  
332 to earn the support of Ranking Member Barton and other  
333 members on his side of the aisle so this will be a true  
334 bipartisan effort.

335         What this bill does not do, and what no legislation can  
336 do, is ensure that NHTSA has the willingness and leadership  
337 to use its authority to the fullest extent. For that, we are  
338 relying on you, Administrator Strickland, and I must take  
339 this opportunity to commend you for your leadership  
340 overseeing the agency's response to the Toyota situation  
341 beginning just moments after your confirmation. It is clear  
342 that together with Secretary LaHood you are committed to  
343 putting NHTSA ahead of the curve when it comes to safety and  
344 it is our intention to make sure this bill gives you the  
345 authority and the resources you need. Thank you, Mr.  
346 Chairman.

347         [The prepared statement of Mr. Waxman follows:]

348 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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349           Mr. {Sarbanes.} Thank you, Mr. Chairman. The chair now  
350 recognizes Representative Sutton from Ohio for 5 minutes.  
351 Sorry about that. We got a vote coming up so we will try to  
352 get as many in as we can. Representative Stearns from  
353 Florida is recognized for 5 minutes.

354           Mr. {Stearns.} Thank you. Mr. Chairman, thank you for  
355 holding this hearing on a draft bill. This is a draft bill,  
356 the Motor Vehicle Safety Act. I understand, and I think all  
357 of us do on this committee, the importance of needing to  
358 improve the National Highway Traffic Safety Administration,  
359 NHTSA's ability to handle and manage automobile recalls and  
360 the need for some changes to its safety authorities. I think  
361 we all agree. I support enhanced motor vehicle safety  
362 protections for American consumers, but, frankly, I do have  
363 some concerns with the draft bill as currently written. To  
364 begin with, this bill mandates that all auto manufacturers  
365 equip their vehicles with an event data recorder, an EDR,  
366 within 2 years, and also mandates the collection of  
367 additional specific data.

368           Most vehicles on the road today already have EDRs. This  
369 bill will allow the government access to all sorts of new  
370 information that these EDRs record in the name of ``improving  
371 vehicle safety.'' My colleagues, there is some serious

372 concerns about privacy here. What is the information it can  
373 collect and how is it going to be used and will the consumer  
374 know about it? This bill also contains a brand new text as  
375 mentioned, an auto manufacturers text. It is phased in at \$3  
376 per vehicle and increases to \$9 per vehicle within 3 years.  
377 Now this is a tax. This is not within the jurisdiction of  
378 this committee. We have no oversight of it.

379 We also need to steer clear of dictating the way cars  
380 are designed, where parts are placed, particularly when it is  
381 unrelated to safety and there is no specific evidence  
382 demonstrating an identifiable problem. This bill contains  
383 overly prescriptive rulemaking authority for NHTSA to  
384 determine the size, location of all keyless ignition systems  
385 and a pedal placement standard. Manufacturers may have to  
386 redesign their current system. Obviously, those costs are  
387 going to be passed on to the consumer. This bill has serious  
388 economic ramifications. There is an \$80 million increase for  
389 NHTSA. Many of us are concerned about that. I think we all  
390 agree that NHTSA needs some support but this \$80 million, how  
391 is it going to be spent? Where is it going to be used? Is  
392 it going to hire more bureaucrats or is it actually going to  
393 make a difference?

394 There are additional problems with the elimination of a  
395 cap on civil penalties and a broad new eminent hazard

396 authority that requires no fact checking. So I hope, Mr.  
397 Chairman, we can move this bill forward but in a bipartisan  
398 manner because I think the bill needs improvement today.  
399 Thank you.

400 [The prepared statement of Mr. Stearns follows:]

401 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
402 Mr. {Sarbanes.} Thank you. We have got votes pending  
403 so I would encourage people if they could maybe keep their  
404 opening statements a little bit shorter, we could get to a  
405 couple more people before we adjourn for a short break. I  
406 recognize the gentlelady from Ohio, Congresswoman Sutton.

407 Ms. {Sutton.} Thank you, Mr. Chairman. Over the last  
408 few months consumers have been alarmed by the recall of  
409 millions of Toyota vehicles due to unintended acceleration.  
410 For consumers, the safety of a vehicle is a top priority  
411 which is why it was especially daunting to learn that for  
412 Toyota the decision of whether to recall vehicles on our  
413 roads was made outside of the U.S. Our consumers expect  
414 better and with the Motor Vehicles Safety Act we have the  
415 opportunity to ensure that NHTSA's mission to save lives,  
416 prevent injuries, and reduce economic costs due to traffic,  
417 to road traffic crashes is accomplished. It is essential  
418 that we work together to produce a good bill, a bill that  
419 will address the problems that have become apparent in recent  
420 months.

421 NHTSA must be capable of conducting necessary, in-depth  
422 investigations into new and complex systems and lighter  
423 materials in vehicles. NHTSA must also be able to effectuate  
424 necessary, timely recalls so that U.S. officials are not left

425 in the position of having to travel overseas to ask for a  
426 voluntary recall of unsafe vehicles on our roadways carrying  
427 our families, and we must find a way to address the revolving  
428 door issue so that the American people can be assured that  
429 officials are always working to ensure the safety with the  
430 sharp focus that it requires. The Motor Vehicle Safety Act  
431 also would require NHTSA to promulgate a rule that requires  
432 all vehicles to be equipped with an event data recorder,  
433 which I think is overdue. In 2004, some automakers urged  
434 NHTSA to adopt a federal motor vehicle safety standard that  
435 mandated the installation of event data recorders on  
436 passenger cars and light trucks.

437 NHTSA did not go forward at that time with the proposed  
438 rulemaking for EDRs, and that was 6 years ago, so I am  
439 concerned that the issues with the unintended acceleration in  
440 recent months may also delay the agency's rulemaking of  
441 stability control for commercial vehicles. And I would like  
442 to hear about when NHTSA plans to release a Notice of  
443 Proposed Rulemaking for stability control systems for  
444 commercial vehicles. I want to stress that I appreciate your  
445 commitment to fulfilling NHTSA's important responsibilities,  
446 Administrator Strickland, and the commitment of Secretary  
447 LaHood, and I look forward to hearing from you and all the  
448 witnesses today about ways we might improve the Motor Vehicle

449 Safety Act. Thank you.

450 [The prepared statement of Ms. Sutton follows:]

451 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
452           Mr. {Sarbanes.} The chair recognizes Mr. Latta from  
453 Ohio for 2 minutes.

454           Mr. {Latta.} Thank you, Mr. Chairman, and Ranking  
455 Member Whitfield, thank you for holding this hearing today to  
456 discuss the discussion draft on the Motor Vehicle Safety Act  
457 for 2010. I think it is very important that the United  
458 States looks at the recent incidents involving motor vehicle  
459 safety and ensure that our citizens are safe behind the  
460 wheel. With that in mind, I have serious concerns about this  
461 draft legislation and particularly with privacy concerns and  
462 user fees that will be passed along to consumers. Section  
463 401 of this legislation requires a new per vehicle  
464 manufacturer user fee. This provision is not capped in the  
465 proposed legislation and will be passed along to the  
466 consumer. My district, the 5th of Ohio, currently has an  
467 average unemployment rate of 13.5 percent.

468           The federal government cannot continue to hinder  
469 businesses and consumers with unnecessary fees and burdensome  
470 regulations. In addition, I have concerns with Section 107  
471 mandating the EDRs in all new vehicles within 2 years. Not  
472 only will this mandatory requirement drive up the cost to the  
473 manufacturer which will, again, be passed along to the  
474 consumer but will with no opt out provision or ability to

475 turn the device off will bring serious privacy concerns for  
476 American citizens.

477         While it is my understanding that 80 percent of new cars  
478 sold today are equipped with EDRs there still remains  
479 significant privacy concerns dealing with the rights of what  
480 information the government has access to including  
481 information gathering for court orders, defect  
482 investigations, and vehicle safety improvement information  
483 gathering. Finally, this draft legislation will authorize  
484 \$720 million for fiscal year 2011 to 2013 and 2011. In 2011  
485 until 2013 this is an \$80 billion increase in authorized  
486 funding without an explanation on how these additional funds  
487 will be used by NHTSA or how it will go towards saving lives.  
488 This legislation is in the same theme of hidden costs and tax  
489 increases on hard-working Americans.

490         At the time of economic hardship, this legislation looks  
491 to force more bureaucratic mandates on businesses. Our  
492 nation's economic future requires that this Congress and  
493 Administration exercise serious fiscal restraint and stop  
494 excessive spending and be held accountable and be  
495 transparent. Mr. Chairman, I appreciate your holding the  
496 hearing on the Motor Vehicle Safety Act of 2010. I look  
497 forward to working with you and Ranking Member Whitfield, and  
498 I yield back.

499 [The prepared statement of Mr. Latta follows:]

500 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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501           Mr. {Sarbanes.} I thank the gentleman. The chair  
502 recognizes the gentleman from Michigan, Mr. Stupak, 2  
503 minutes.

504           Mr. {Stupak.} Thank you, Mr. Chairman, and Ranking  
505 Member Whitfield, for holding this hearing on draft  
506 legislation to strengthen the National Highway Traffic Safety  
507 Administration, NHTSA's authority to provide the resources  
508 necessary to keep consumers safe on the road. On February 23  
509 of this year, I chaired a hearing on the Oversight and  
510 Investigation Subcommittee to examine the response by Toyota  
511 and NHTSA to incidents of sudden unintended acceleration in  
512 Toyota vehicles. The subcommittee found that NHTSA lacks the  
513 personnel, resources, and authority to adequately address and  
514 investigate auto safety complaints. My subcommittee will  
515 further examine these issues in a May 20 hearing. As we  
516 continue to explore the specific failures of Toyota and the  
517 federal regulators in this specific incidence, it is  
518 imperative that we begin the process of enacting legislation  
519 to address the weaknesses we already know exist.

520           Through the Toyota investigation, we learned a lot about  
521 event data recorders or EDRs and about the problems that  
522 exist in allowing federal regulators, law enforcement, and  
523 vehicle owners, consumers, access to the data they contain.

524 The new requirements contained in Section 107 of the draft  
525 bill making EDRs mandatory setting a set standard of data  
526 they must contain and ensuring they are accessible with  
527 commercially available equipment will provide all parties the  
528 information they need to troubleshoot, investigate, and  
529 ultimately remedy future safety issues. Granting it is an  
530 eminent hazard recall authority is an equally necessary step  
531 to protect Americans. I am also pleased that committee draft  
532 requires that information submitted through the early warning  
533 reporting system is publicly disclosed. I look forward to  
534 delving into these issues more thoroughly and hearing from  
535 our witnesses as to whether the disclosure requirements in  
536 the draft legislation adequately provide regulators, law  
537 enforcement, and consumers access to the information they  
538 need.

539 I look forward to a productive hearing to discuss  
540 meaningful improvements to the National Highway Traffic  
541 Safety Administration and to our additional oversight  
542 hearings. I appreciate the willingness of our witnesses to  
543 be here, and I will listen closely to any suggestions they  
544 may have to improve this legislation. I yield back, Mr.  
545 Chairman.

546 [The prepared statement of Mr. Stupak follows:]

547 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
548           Mr. {Sarbanes.} I thank the gentleman. We are going to  
549 have one more opening statement before we adjourn for the  
550 votes. I recognize the gentleman from Louisiana, Mr.  
551 Scalise.

552           Mr. {Scalise.} Thank you, Mr. Chairman. I appreciate  
553 you having this hearing on the Motor Vehicle Safety Act. I  
554 would like to acknowledge Chairman Rush for bringing this  
555 legislation forward and his hard work on behalf of consumers.  
556 The goals of this draft legislation strengthening NHTSA and  
557 improving vehicle safety are good, but I have concerns about  
558 the steps it takes to get there. To start with, Section 202  
559 provides NHTSA with new expansive imminent hazard authority  
560 to order a manufacturer to stop production, sale,  
561 distribution or importation of vehicles. I am concerned that  
562 this provision would short circuit the recall process, not  
563 improve it, and it will give unilateral authority to the  
564 Administrator while taking away due process from  
565 manufacturers.

566           What is more alarming is that this provision is in the  
567 draft while DOT Secretary LaHood and NHTSA Administrator  
568 Strickland both previously testified that they had existing  
569 authority to pursue potential violations. The draft  
570 legislation also places a vehicle safety user fee on

571 manufacturers which is, of course, another word for a tax  
572 increase that will raise the cost of buying a car on  
573 families. Furthermore, this tax is uncapped and would  
574 continue to rise each year after it is enacted. Not only  
575 does the draft increase the cost of vehicles for consumers  
576 but it also increases the burden of American taxpayers by  
577 raising the authorized funding for NHTSA by \$80 million over  
578 2 years with no explanation of where this new spending will  
579 come from or how the money will be used.

580         While I understand that we need to examine improving  
581 NHTSA's capabilities, we must keep in mind the need to  
582 restore fiscal discipline. With a \$1.5 trillion deficit  
583 there might be some in Washington who don't see anything  
584 wrong with increasing a budget by 40 percent over 2 years,  
585 but there are also those of us who are adamant that we must  
586 reign in the out of control spending that is taking place  
587 here in this Congress, and finally there are also 2  
588 provisions I must mention. Section 201 eliminates the total  
589 cap on penalties, and the second provision is 301 that  
590 expands the categories of data that must be made public as  
591 part of any early warning reporting program, which could  
592 include confidential business information and unwarranted  
593 claims.

594         Removing the cap on total penalties and requiring the

595 disclosure of proprietary information makes me question who  
596 we are trying to strengthen, NHTSA or the trial lawyers. I  
597 would like to close by reiterating that I am pleased we are  
598 trying to improve vehicle safety and support NHTSA, but I am  
599 concerned that this bill is driving down the wrong road.

600 Thank you, and I yield back.

601 [The prepared statement of Mr. Scalise follows:]

602 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
603           Mr. {Sarbanes.} Thank you, Mr. Scalise. I have been  
604 promised by the next two that they will be 30 seconds, real  
605 quick. Mr. Green of Texas.

606           Mr. {Green.} Mr. Chairman, I would like to ask  
607 unanimous consent for my full statement to be placed in the  
608 record and just make one statement. I introduced H.R. 5169,  
609 the Event Data Recorder Enhancement Act. The draft bill, our  
610 bill I think looks like the Chevy whereas what the draft is  
611 more like a Mercedes, and we would hope we could afford the  
612 Chevy plan on the EDR. But I am glad the bills--we have a  
613 draft. Obviously, after our hearing we heard from Toyota  
614 owners. We need legislation, and I would be glad to work  
615 with the chair on the bill.

616           [The prepared statement of Mr. Green follows:]

617           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
618 Mr. {Sarbanes.} Mr. Gingrey is recognized for 100  
619 milliseconds.

620 Dr. {Gingrey.} Mr. Chairman, you know I am from Georgia  
621 and not Maryland so that might be awfully difficult for me to  
622 do. But if you will yield unanimous consent to let me submit  
623 my entire testimony, I will get going quickly.

624 Mr. {Sarbanes.} Without objection.

625 Dr. {Gingrey.} Mr. Chairman, I want to thank you for  
626 calling today's hearing on the discussion draft of the Motor  
627 Vehicle Safety Act of 2010. In light of recent events that  
628 have occurred, it is very important that we use the  
629 opportunity today to review the way NHTSA, National Highway  
630 Traffic Safety Administration, operates but the ultimate goal  
631 of keeping vehicular travel as safe as possible for drivers  
632 across the country. Mr. Chairman, while I believe it is  
633 important to review the actions and work of NHTSA, I think it  
634 is equally important that we do not move forward on  
635 legislation that would add mandates on the transportation  
636 industry or create more of a burden for the already  
637 struggling American taxpayer. So I certainly hope that we  
638 keep this in mind as we hear from our witnesses today and  
639 work to craft the proper legislation to reauthorize NHTSA,  
640 and I yield back.

641 [The prepared statement of Dr. Gingrey follows:]

642 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
643           Mr. {Sarbanes.} Thank the gentleman. Mr. Braley, do  
644 you want to enter something into the record?

645           Mr. {Braley.} I just want to make a very brief comment.  
646 I am a firm believer in the power of symbolism, and as I was  
647 coming back from baseball practice this morning, Mr.  
648 Chairman, I saw a Ford Maverick with a Ron Paul sticker on  
649 it. It reminded me that the Maverick was the predecessor of  
650 the Fort Pinto, which was introduced in 1970, the same year  
651 that NHTSA was founded, and as we consider the important  
652 subject matter of this hearing and how we go about improving  
653 safety for all auto consumers and passengers and operators in  
654 this country, I think it is important to think back over the  
655 history of this agency and the important mission that it has,  
656 and that is why I will yield back the balance of my time and  
657 rush to the Floor to vote. Thank you.

658           [The prepared statement of Mr. Braley follows:]

659 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
660 Mr. {Sarbanes.} We are going to adjourn the committee  
661 for the votes. When we come back, we will go straight to the  
662 first panel. We appreciate your patience. We are adjourned.

663 [Recess]

664 Mr. {Rush.} The subcommittee is called back to order.  
665 The chair really wants to, first of all, extend my deepest  
666 and sincere apologies for the delay. It is just the way we  
667 have had to move today. I had a number of conflicting items  
668 on the agenda and we had to try to cover a lot of bases. And  
669 now the chair wants to recognize the esteemed administrator  
670 of the National Highway Traffic Safety Administration, the  
671 Honorable David Strickland. Mr. Strickland, we really  
672 appreciate the fact that you have taken your time to be here  
673 and that you have been so patient with us. And you are  
674 recognized now for 5 minutes for the purposes of an opening  
675 statement. And before I do recognize you, Mr. Strickland, I  
676 would ask that you allow me to swear you in. That is the  
677 practice of the subcommittee.

678 [Witness sworn]

679 Mr. {Rush.} Let the record reflect that the witness has  
680 answered in the affirmative. And now you are recognized for  
681 5 minutes.

|  
682 ^TESTIMONY OF THE HONORABLE DAVID STRICKLAND, ADMINISTRATOR,  
683 NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

684 } Mr. {Strickland.} Mr. Chairman, thank you so much for  
685 this opportunity, Mr. Whitfield and other members of the  
686 committee. Again, the men and women of NHTSA thank you for  
687 the chance today to discuss the proposals to strengthen the  
688 authority of the National Highway Traffic Safety  
689 Administration. I applaud the committee members and their  
690 staff for working so hard to understand these issues and for  
691 reflecting that understanding in the committee draft of the  
692 Motor Vehicle Safety Act of 2010. Time has not permitted  
693 full review of all the draft legislation's provisions  
694 throughout the executive branch, so my remarks will be  
695 confined to some of the major provisions.

696 Today's hearing is an opportunity to work together to  
697 improve the safety of our Nation's roadways. We very much  
698 appreciate the provisions in the committee draft that would  
699 enhance NHTSA's vehicle safety authority. NHTSA is a strong  
700 agency. The bill's authorities would make us stronger. If  
701 enacted, these measures would significantly increase the  
702 agency's leverage in dealing with manufacturers. The  
703 additional of imminent hazard authority would bring NHTSA's

704 authority into line with many of its other sister safety and  
705 health agencies. This provision gives NHTSA an important  
706 avenue through which to deliver on its consumer protection  
707 mission, a mission that I strongly believe in.

708         As part of that safety mission, NHTSA collects a wealth  
709 of information in its various databases. We share in  
710 President Obama's assessment that information maintained by  
711 the federal government is a national asset. This proposed  
712 bill would require NHTSA to improve the accessibility of the  
713 information on its publicly available databases. We will be  
714 very happy to do so in looking at several ideas on how to  
715 make our recall and our investigations data more user  
716 friendly. Even in the current state, NHTSA's information  
717 stores are among the most outstanding consumer safety  
718 databases in government. Improving them would promote  
719 transparency. Transparency promotes accountability and  
720 provides information for citizens about what their government  
721 is doing.

722         I will work with the Secretary and the Congress to  
723 strengthen and improve NHTSA so that it can continue to  
724 achieve its mission in saving lives, preventing injuries, and  
725 reducing economic costs due to road traffic crashes. We will  
726 be accountable to the President, to Secretary LaHood, and to  
727 the American Public, for whom we at NHTSA proudly serve.

728 Thank you very much, Mr. Chairman, and I look forward to  
729 answering the questions of the committee.

730 [The prepared statement of Mr. Strickland follows:]

731 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|

732           Mr. {Rush.} The chair thanks the witness. Now the  
733 chair recognizes himself for 5 minutes for questioning of the  
734 witness. Mr. Strickland, I have a lot of respect for you. I  
735 know you, and I have known you and your family for quite some  
736 time and have nothing--I am very proud of what you have  
737 accomplished and am proud of the things that you have done in  
738 terms of your public service work. But I am a little  
739 disappointed, I must say, in your opening statement. I have  
740 to be very honest with you. This legislation--first of all,  
741 I know there is a process for developing testimony in the  
742 executive branch, and I am very cognizant of the fact that  
743 you only have a short turnaround time in terms of developing  
744 your testimony here. With that said, there is really a  
745 gaping hole that exists in your testimony in the complete  
746 lack of detail that I was expecting, and I know that you are  
747 capable of and I have seen you do this in the past.

748           There is a lack of detail in your testimony that leaves  
749 us kind of wanting as a subcommittee. This legislation that  
750 is before us aims to overhaul your agency providing you with  
751 new enforcement authorities and additional resources. And we  
752 are glad to do this. We are proud to do this. We are giddy  
753 about doing this for NHTSA and giving it new authorities and  
754 resources. And it also mandates several new safety standards

755 and creates new transparencies in auto safety. And I know  
756 you got more to say in regards to whether it is in this bill  
757 or not. What do you see as the most important new authority  
758 Congress could grant NHTSA that would strengthen the agency  
759 and improve auto safety? What is the most important new  
760 authority that you need?

761 Mr. {Strickland.} Well, Mr. Rush, I definitely do not  
762 want to disappoint you or the rest of the committee with the  
763 breadth of my statement. As you are aware, we at the  
764 Department of Transportation and also with the executive  
765 branch do have a process by which we evaluate both discussion  
766 and introduce legislation, and that is in process. I  
767 apologize profusely that we were not able to give you more  
768 granulated and detailed assessment of the work. That will be  
769 coming. I will be more than happy to provide that more  
770 detailed recitation when it has completed the review. I am  
771 happy to appear before the committee if that is your wish to  
772 do so at that time, but I will do my best to try to fill in  
773 some of the issues that you wish to discuss.

774 The bill, to give an overview, anything that provides  
775 NHTSA the authority to be able to expedite the recall  
776 process, whether it is in negotiating with the manufacturers  
777 of trying to get them to issue a voluntary recall or an  
778 ability for the agency to be able to move forward in a

779 fashion--to do so in a mandatory fashion such as with the  
780 imminent hazard authority. Those are the core, I think, of  
781 what we will want to achieve here at NHTSA, which is to be an  
782 agency that can take risks off the road as quickly as we can,  
783 and anything in this legislation that helps us achieve that  
784 is something that I believe that NHTSA would wholly embrace.  
785 There is lots of details in part of those new authorities and  
786 process that we stand at the ready to discuss.

787         Anything that helps us achieve that goal, which is  
788 including the increase in penalty authority, I think the  
789 opportunity for us to really have a penalty that creates a  
790 real deterrent for manufacturers and equipment manufacturers  
791 as well to not violate the Act, I think helps in that  
792 leverage in the negotiation process and also helps those  
793 manufacturers make quicker decisions in terms of safety.

794         Mr. {Rush.} My time is running down, but the other  
795 question that I have, what is missing from this bill in your  
796 opinion? What is missing? What can we do additionally?

797         Mr. {Strickland.} In our evaluation, our preliminary  
798 evaluation and discussions with your staff and other staff  
799 members, this does capture the universe of what, I think,  
800 would be helpful to NHTSA. There are clearly other things  
801 that could be of assistance, but in terms of what we would  
802 anticipate as being helpful to strengthen the authority, the

803 bill does give a fantastic foundation for the first steps in  
804 helping us be a stronger and more transparent agency.

805         Mr. {Rush.} The chair yields back the balance of his  
806 time. I recognize the gentleman from Kentucky, Mr.  
807 Whitfield, for 5 minutes.

808         Mr. {Whitfield.} Thank you, Chairman Rush, and, Mr.  
809 Strickland, for your testimony. I for one am pleased that  
810 you all are reviewing this legislation carefully because it  
811 would bring about significant changes, not only to NHTSA but  
812 certainly to a lot of manufacturers around the country, as  
813 well as to consumers, and I do think it is imperative that  
814 you all take the necessary time to look at this closely. You  
815 testified before our committee not too long ago, and if I  
816 were the administrator of a federal agency, I would be  
817 thrilled if some legislation came along giving me new  
818 authority, giving me new money, and so I can understand how  
819 you all would not be opposed to this legislation. But when  
820 you testified before--I mean the important thing is that you  
821 be able to do your job, which I think NHTSA is doing.

822         But you testified before that you have engineers at  
823 NHTSA, you have electrical engineers at NHTSA, you have  
824 software engineers, you have engineers in East Liberty, Ohio.  
825 You can hire consultants for additional expertise, and you  
826 said there is not a notion that we don't have the proper

827 expertise to handle today's automobiles. And then Mr.  
828 Dingell asked you a question, and I know that President Obama  
829 has given you additional money in his budget for this year,  
830 and you said when the President's budget is passed, we will  
831 have the resources we need.

832 And, you know, this is all we can expect from people who  
833 have the responsibility for these agencies in our government  
834 is to give us an honest, candid view of whether or not they  
835 have adequate resources. And you said very clearly that you  
836 had adequate resources, so many of us feel like this bill is  
837 too broad. But I want to ask you this question. The center  
838 that this bill establishes, the Center for Vehicle  
839 Electronics and Emerging Technologies, is there such a center  
840 similar to that at the Department of Transportation for  
841 railroads or for airlines or for any other type of  
842 transportation?

843 Mr. {Strickland.} I am not familiar if there is a  
844 similar center that focuses on that particular area. I will  
845 have to get back to you on the record with some specificity.  
846 I may be incorrect on that, but from my recollection I don't  
847 believe there is one.

848 Mr. {Whitfield.} Was your opinion solicited on whether  
849 or not this center should be placed in this legislation  
850 before the draft was written?

851 Mr. {Strickland.} We were not asked in terms of to give  
852 a particular comment when the discussion draft was  
853 transmitted to the Department of Transportation. We put it  
854 in for internal review and also sent it over to the White  
855 House also for their review, so we have not issued an opinion  
856 about that particular concept at this time but when we have  
857 finished our review, we will definitely transmit that  
858 opinion.

859 Mr. {Whitfield.} But it sounds like you were not really  
860 involved in drafting this legislation in your agency and  
861 providing information to draft this legislation.

862 Mr. {Strickland.} No, sir. We were asked--we were  
863 consulted in terms of concepts but the actual technical  
864 assistance and drafting was handled by the committee staff.

865 Mr. {Dingell.} Will the gentleman yield?

866 Mr. {Whitfield.} Yes, sir.

867 Mr. {Dingell.} I thank you. Would you make that review  
868 available to this committee as soon as you can, please?

869 Mr. {Strickland.} Yes, sir. Absolutely, Mr. Dingell.

870 Mr. {Dingell.} I thank the gentleman.

871 Mr. {Whitfield.} I wish that they had talked to you in  
872 some detail before this legislation was written because it is  
873 your agency's responsibility to carry out the role and the  
874 responsibility, and if there was any group that would have a

875 clear understanding of this, it would be your agency. One  
876 other question I would just like to ask. Toyota was fined, I  
877 think, \$16 million which I guess was the maximized--

878 Mr. {Strickland.} Yes, sir, that is correct.

879 Mr. {Whitfield.} --fine that could be levied. How was  
880 it actually determined what that dollar value should be for  
881 that fine?

882 Mr. {Strickland.} That is actually a straight calculus  
883 of the actual violation times the number of cars that were in  
884 violation. If I am not mistaken, I believe that there was  
885 not a cap that limited us to \$16.375 million. I believe the  
886 fine could have been well over \$13 billion for the entire  
887 population of cars that were subject to the violation of the  
888 timeliness query.

889 Mr. {Whitfield.} It could be how much?

890 Mr. {Strickland.} \$13 billion.

891 Mr. {Whitfield.} Billion?

892 Mr. {Strickland.} Yes.

893 Mr. {Whitfield.} You have that authority?

894 Mr. {Strickland.} That would be the maximum per  
895 violation but we are limited to \$16 million. I believe our  
896 recitation of breakdown of the possible maximum fine without  
897 the gap was included in our demand letter to Toyota.

898 Mr. {Whitfield.} Okay. Thank you.

899 Mr. {Rush.} The chair now recognizes the chairman  
900 emeritus of the full committee who graciously relinquished  
901 his time for an opening statement to be used now during the  
902 time of questioning, so the chair recognizes the chairman  
903 emeritus for 10 minutes for the purpose of questioning the  
904 witness.

905 Mr. {Dingell.} Mr. Chairman, I thank you for your  
906 courtesy. I commend you for the hearings. My questions, Mr.  
907 Administrator, will be answerable yes or no. The first  
908 question, Title I of the discussion draft under question  
909 mandates that DOT prescribe new federal motor vehicle safety  
910 standards for passenger cars without any preliminary study by  
911 NHTSA or DOT or any of them. Is DOT or NHTSA sufficiently  
912 prepared to undertake such rulemakings for each of these  
913 proposals without any preliminary study of the need,  
914 practicality and appropriateness of each such rule for all  
915 manufacturers and their models, yes or no?

916 Mr. {Strickland.} NHTSA at this time is beginning its  
917 preliminary research--

918 Mr. {Dingell.} No, no. I want a yes or no. I have  
919 limited time. Yes or no.

920 Mr. {Strickland.} At this particular time, Mr. Dingell,  
921 we are preparing to undertake possible rulemaking--

922 Mr. {Dingell.} So you are not at this time prepared--

923 you are not prepared to answer the question or you are not  
924 prepared to perform the rulemaking without the necessary  
925 study switch?

926 Mr. {Strickland.} We have work underway for all of  
927 those things right now.

928 Mr. {Dingell.} I don't want to filibuster. I just want  
929 a yes or no answer. I know that is going to be fairly easy  
930 once we get to working together.

931 Mr. {Strickland.} Yes, sir, Mr. Dingell.

932 Mr. {Dingell.} Yes or no.

933 Mr. {Strickland.} At this time, no, we would not be  
934 prepared to go to immediate rulemaking on those issues.

935 Mr. {Dingell.} Thank you. It is really easier than we  
936 thought, isn't it. My reading of Title I of the discussion  
937 draft shows that it does not amend the existing safety act of  
938 Title 49 of U.S. Code, and thus does not require any new  
939 federal motor vehicle safety standard to be prescribed in  
940 accordance with Section 3011 of the Safety Act. Do you  
941 agree?

942 Mr. {Strickland.} As drafted, that is correct. Yes,  
943 Mr. Dingell.

944 Mr. {Dingell.} Thank you. Now, Mr. Strickland, further  
945 to my knowledge there is nothing in Title I of the discussion  
946 draft that would make these new standards subject to the

947 provisions of the existing safety statute and thus  
948 enforceable. Is this observation correct, yes or no?

949 Mr. {Strickland.} That is a correct observation, Mr.  
950 Dingell.

951 Mr. {Dingell.} Now, Mr. Administrator, as you know, the  
952 Safety Act generally applies to new motor vehicles because  
953 Title I of the discussion draft does not amend the Safety Act  
954 and thus is not subject to the Act's definition. Is it  
955 conceivable that the term passenger vehicles as used in the  
956 discussion draft would include new cars and cars also that  
957 are already on the road, yes or no?

958 Mr. {Strickland.} It is not conceivable, sir. I  
959 believe it would only apply to new cars because the  
960 definition is cross applied throughout Title 49 but we will  
961 definitely be happy to give technical assistance to--

962 Mr. {Dingell.} Is the answer yes or no?

963 Mr. {Strickland.} Is it conceivable? No, it is not.  
964 It will only apply to new cars.

965 Mr. {Dingell.} It will not?

966 Mr. {Strickland.} It will not be retroactive.

967 Mr. {Dingell.} I would like to have you submit further  
968 information as to why you make that statement.

969 Mr. {Strickland.} Yes, sir.

970 Mr. {Dingell.} The rule proposes in Title I of the

971 discussion draft each provide lead time requirements of one  
972 or two model years, and in one case 60 days after enactment  
973 for all makes and all models of passenger cars without any  
974 determination by the Secretary as to the reasonableness and  
975 practicability of those deadlines or applicable rule. Does  
976 DOT today know that such lead times are realistic and  
977 practical taking into consideration energy, needed  
978 technology, impacts on models, as well as costs of appliance?  
979 Yes or no.

980 Mr. {Strickland.} Past practice and rulemaking, those  
981 are very aggressive deadlines--

982 Mr. {Dingell.} Just yes or no if you please.

983 Mr. {Strickland.} No, sir. I believe that those  
984 deadlines are impractical at this point.

985 Mr. {Dingell.} You believe what?

986 Mr. {Strickland.} I believe that those deadlines are  
987 very tight and possibly impractical until we can actually  
988 work with the manufacturers in terms of meet lead time needs.

989 Mr. {Dingell.} Thank you very much, Mr. Administrator.  
990 Now, Mr. Administrator, my understanding of the federal motor  
991 vehicle safety standards is that they are almost universally  
992 performance standards, yet only one proposal, Section 104 on  
993 electronic systems, calls for a performance standard while  
994 event data recorder and brake override proposals are quite

995 prescriptive. Is DOT now ready to develop such prescriptive  
996 rules and know definitively that they will provide ``motor  
997 vehicle safety'' as the term is defined in the Safety Act?  
998 Yes or no.

999 Mr. {Strickland.} Research is underway. NHTSA is not  
1000 prepared to do that at this time.

1001 Mr. {Dingell.} Okay. Now, Mr. Administrator, with  
1002 respect to Section 201, the discussion draft related to civil  
1003 penalties, I note it contains no provision for judicial  
1004 review or penalty assessment criteria such as the size of the  
1005 business, economic impact, history, duration of the  
1006 violation, seriousness, and willfulness. EPA must take into  
1007 account these factors when assessing civil penalties under  
1008 the Clean Air Act and under your administration or other  
1009 provisions requiring similar actions. Should the Safety Act  
1010 be amended to include possible judicial reviews of penalties  
1011 and require DOT to take into account penalty assessment  
1012 criteria such as EPA must? Yes or no.

1013 Mr. {Strickland.} May I get back to you on the record  
1014 for that specifically, Mr. Dingell?

1015 Mr. {Dingell.} Mr. Administrator, the discussion draft  
1016 strikes the maximum penalty for related series of violations.  
1017 Do you believe that this is justified especially in view of  
1018 the fact that the Safety Act contains no provision for

1019 judicial review of penalties or require the Secretary to take  
1020 into account any penalty assessment criteria? Yes or no.

1021 Mr. {Strickland.} There are factors that we currently  
1022 consider for the evaluation of a penalty right now for  
1023 current authorities. That would cross apply to this  
1024 situation so as drafted the NHTSA would take those under  
1025 consideration--

1026 Mr. {Dingell.} How could you do it if you are not  
1027 required by law?

1028 Mr. {Strickland.} It is by our current administration  
1029 practice in assessing penalties.

1030 Mr. {Dingell.} That is just policy which would change  
1031 with the wind. Mr. Administrator, Section 202 of the  
1032 discussion draft allows the Secretary to issue an imminent  
1033 hazard order against vehicle manufacturers. Does DOT have a  
1034 definition for the term imminent hazard either in the  
1035 regulation or the statute? If you have such, will you submit  
1036 it for the record?

1037 Mr. {Strickland.} Yes, sir, I will.

1038 Mr. {Dingell.} Now, Mr. Administrator, likewise,  
1039 Section 202 permits the Secretary to issue such imminent  
1040 hazard orders absent prior judicial review and consent.  
1041 Should DOT have to show by suit in federal court that hazard  
1042 is imminent just as EPA must do under Section 303 of the

1043 Clean Air Act and CPSC must do under Section 11 of the  
1044 Consumer Product Safety Act as opposed to forcing the  
1045 aggrieved person to seek judicial review at the Circuit Court  
1046 level where there is no trial of facts? Yes or no.

1047 Mr. {Strickland.} I would like to get back to you for  
1048 the record on that, Mr. Dingell, but to let you know that our  
1049 sister modal agency such as the Federal Rail Administration  
1050 and others have similar imminent hazard authority as seen in  
1051 the committee draft.

1052 Mr. {Dingell.} This is not, remember, Mr.  
1053 Administrator, tied to the Automotive Safety Act nor to the  
1054 Administrative Procedure Act. Now Section 301 of the  
1055 discussion draft requires DOT to conduct rulemaking on  
1056 disclosure of information about vehicle defects, repairs, et  
1057 cetera, with a presumption favoring maximum public  
1058 disclosure. Given that DOT has existing regulations on  
1059 public disclosure and must comply with the Freedom of  
1060 Information Act, is such a disclosure rulemaking as the  
1061 discussion drafts mandates? Yes or no.

1062 Mr. {Strickland.} I would like to get back to you on  
1063 the record with that, Mr. Dingell.

1064 Mr. {Dingell.} Mr. Administrator, Section 401 of the  
1065 discussion draft requires vehicle manufacturers to pay an  
1066 annual fee on a per vehicle basis. Such fees shall be used

1067 according to the discussion draft to meet the obligations of  
1068 the United States to carry out the vehicle safety programs of  
1069 the National Highway Traffic Administration. To the best of  
1070 my knowledge, these obligation are not defined in the  
1071 discussion draft. Do you agree? Yes or no.

1072 Mr. {Strickland.} The obligations are not defined. We  
1073 will be happy to get back to the record on the question.

1074 Mr. {Dingell.} Now, Mr. Administrator, the discussion  
1075 draft sets out per vehicle fees to meet NHTSA's obligations.  
1076 Absent a clear definition of these obligations, do you  
1077 believe that the levels of these fees as defined in the  
1078 discussion draft are arbitrary? Yes or no.

1079 Mr. {Strickland.} I will have to get back to the  
1080 record, Mr. Dingell.

1081 Mr. {Dingell.} Mr. Administrator, similarly, is DOT in  
1082 possession of any information that would verify the level of  
1083 these fees is appropriate to meet its obligations, whatever  
1084 they might be? Yes or no.

1085 Mr. {Strickland.} I will respond to you on the record,  
1086 Mr. Dingell.

1087 Mr. {Dingell.} You don't know?

1088 Mr. {Strickland.} At this point, we have the 2011  
1089 budget that the President has issued to the Congress--

1090 Mr. {Dingell.} The answer is though, Mr. Secretary, you

1091 don't know--or, rather, Mr. Administrator, you don't know?

1092 Mr. {Strickland.} At this point, sir, we have allocated  
1093 our budget for the 2011 budget. The levels that are produced  
1094 in this bill, we are happy to review.

1095 Mr. {Dingell.} The question is you still don't know.  
1096 Mr. Chairman, you have been most gracious on your gift of  
1097 time to me. I express to you my thanks and also to my good  
1098 friend from Kentucky my gratitude for this kindness in  
1099 yielding to me earlier. Thank you.

1100 Mr. {Rush.} The chair thanks the chairman emeritus.  
1101 And now the chair recognizes the gentleman from Ohio, Mr.  
1102 Space, for 5 minutes.

1103 Mr. {Space.} Thank you, Mr. Chairman. Thank you, Mr.  
1104 Administrator, for your testimony today. I want to shift  
1105 gears and talk a little bit about the testing center in East  
1106 Liberty, Ohio that NHTSA has. And there is no suggestion in  
1107 this bill that that facility be abandoned, but there have  
1108 been some suggestions externally about the prospect of moving  
1109 it. And the impetus behind those suggestions has been that  
1110 because the facility is technically owned by Honda of America  
1111 Manufacturing Corporation that that would represent some kind  
1112 of a conflict of interest. I guess my question to you is are  
1113 you familiar with the facility I am talking about?

1114 Mr. {Strickland.} I am very familiar with the facility.

1115           Mr. {Space.} And you are familiar with the fact that  
1116 the facility itself that is owned by Honda is actually  
1117 operated pursuant to a management agreement by a not-for-  
1118 profit corporation that was founded by Ohio State University?

1119           Mr. {Strickland.} That is correct.

1120           Mr. {Space.} And in your experience have you in the  
1121 past been alerted to any problems associated with the  
1122 ownership specifically that may have arisen as the result of  
1123 a conflict of interest?

1124           Mr. {Strickland.} Mr. Space, my job before I was sworn  
1125 in as administrator of NHTSA, I was an oversight counsel  
1126 which part of my duty was oversight of National Highway  
1127 Traffic Safety Administration for over 8 years. I was very  
1128 familiar with the ownership structure of the VRTC with TRC in  
1129 Ohio State. I never had any knowledge of any conflict of  
1130 interest during my time as a staffer. I took a look at this  
1131 issue very specifically when this was brought to my  
1132 attention. I have seen no indication whatsoever of there  
1133 being an improper relationship. It is a firewall  
1134 relationship between TRC, the Ohio State University for whom  
1135 we pay and Honda of America, which actually owns the land.

1136           Mr. {Space.} Thank you, Mr. Administrator. Are you  
1137 aware of any other manufacturers apart from Honda that may  
1138 have registered complaints about the ownership structure of

1139 the facility?

1140 Mr. {Strickland.} There have been no complaints from  
1141 any manufacturer.

1142 Mr. {Space.} And, finally, has the weather been a  
1143 problem, the Ohio weather been a problem. I know we don't  
1144 have the claim to snow apocalypse but I am curious as to  
1145 whether that has been a problem for the facility.

1146 Mr. {Strickland.} Our staffs have been able to use the  
1147 pad and the other facilities. That has never been an  
1148 impediment to our work in terms of the availability of the  
1149 actual test track itself or the buildings that we use.

1150 Mr. {Space.} Okay. Thank you, Mr. Administrator. I  
1151 yield back my time.

1152 Mr. {Rush.} The chair thanks the gentleman. The chair  
1153 now recognizes the gentleman from Iowa, Mr. Braley, for 5  
1154 minutes.

1155 Mr. {Braley.} Thank you, Mr. Chairman. Mr. Strickland,  
1156 thank you for joining us again.

1157 Mr. {Strickland.} Thank you, Mr. Braley.

1158 Mr. {Braley.} And I want to start with a follow-up  
1159 question to Mr. Dingell's question to you about the scope of  
1160 administrative judicial review. And I want to make sure that  
1161 I understood your response as it relates to NHTSA because my  
1162 understanding is that a general rule any federal agency that

1163 falls within the Federal Administrative Procedure Act in  
1164 order to overturn the action of the agency you have to  
1165 demonstrate in that judicial review process that the action  
1166 of the agency was arbitrary and capricious. That is the  
1167 baseline definition of judicial review for any federal agency  
1168 action. Is that your understanding?

1169 Mr. {Strickland.} That is correct, Mr. Braley.

1170 Mr. {Braley.} But that Congress may, if it chooses to,  
1171 also include in the organic law that gives rise to that  
1172 agency action more limitations on judicial review if it  
1173 chooses to do so?

1174 Mr. {Strickland.} Yes, Mr. Braley, that is correct.

1175 Mr. {Braley.} So the mere fact that there is not  
1176 specific language giving further direction on what should be  
1177 considered as part of that judicial review of NHTSA's act  
1178 does not mean that there is not a formal process for judicial  
1179 review subject to the baseline arbitrary and capricious  
1180 standard?

1181 Mr. {Strickland.} Mr. Braley, you are correct in that  
1182 analysis.

1183 Mr. {Braley.} All right. Now one of the concerns that  
1184 I had and many people had during the period of the Bush  
1185 Administration and its operation of NHTSA was that the agency  
1186 during that period specifically from 2005 to 2008 seemed to

1187 many of us to usurp its own regulatory authority and take on  
1188 the role of Congress by including in many of its preambles  
1189 issued in response to regulations language pre-empting state  
1190 law claims. Are you familiar with that practice?

1191 Mr. {Strickland.} Yes, sir, I am.

1192 Mr. {Braley.} And I know that the President himself at  
1193 the beginning of his Administration took a strong position  
1194 rolling back some of those statements made by agency  
1195 representatives in those preambles and in the regulations  
1196 themselves. Are you able here today as a representative of  
1197 the Administration in your capacity able to assure us that  
1198 those practices will not continue while you are  
1199 Administrator?

1200 Mr. {Strickland.} I can make that obligation,  
1201 absolutely. There is a notion that state's rights are  
1202 incredibly important and those preambles that were placed not  
1203 only in NHTSA's rules but there were several rules throughout  
1204 executive branch agencies and safety agencies which undermine  
1205 safety, and I know the Obama Administration felt very  
1206 strongly that those should not be used to undercut the notion  
1207 of safety whether by the federal government or in the states.

1208 Mr. {Braley.} Thank you. One of the things that this  
1209 Motor Vehicle Safety Act calls on your agency to do is to  
1210 improve public accessibility of information posted to its web

1211 site, and that includes a requirement that you make sure that  
1212 all data is searchable and can be aggregated and downloaded.  
1213 As it exists now, does NHTSA have the capability to ensure  
1214 that this information is posted in an easily accessible and  
1215 searchable fashion that any member of the general public can  
1216 use?

1217 Mr. {Strickland.} At this point we--I have sort of two  
1218 things to say about that, Mr. Braley. Even in the current  
1219 state of NHTSA's database, it is clearly one of the most  
1220 usable and transparent databases in government. We found  
1221 that consumers and the press and members of Congress to be  
1222 able to go through all work, been able to analyze it  
1223 independently of what we have done, so I think that speaks to  
1224 the level of transparency. So we do recognize that it could  
1225 be more user friendly and more accessible, and we have  
1226 efforts underway right now to deal with some of those issues  
1227 including creating a VIN-based identifier system to ensure  
1228 uniformity in usage of vehicle configuration details. The  
1229 vehicle owners questionnaire, the VOQ, is very difficult. I  
1230 know our goal is to make sure that we can make it simpler and  
1231 that drivers and consumers use less time in filling out the  
1232 VOQs so that we can get more information from more consumers.

1233 We have a significant abandonment rate. We get over  
1234 30,000 complaints a year, but there is a lot of people that

1235 begin the process that give up because it is such a difficult  
1236 form to fill out. We need to be better. There are lots of  
1237 other things that we are currently undertaking. I know the  
1238 draft legislation makes mandates and suggestions for us to  
1239 undertake that opportunity. We will continue our own work  
1240 independent of legislation. If this legislation becomes law,  
1241 we will happily work on making the database more consumer  
1242 friendly and more usable.

1243         Mr. {Bralley.} Well, I am very glad to hear that. I am  
1244 shuttling back and forth between two hearings, one on  
1245 transparency in pricing in health care, and this hearing,  
1246 which also has placed a huge emphasis on transparency, and  
1247 transparency is great, but unless you are communicating with  
1248 your intended users in language they can understand all that  
1249 you do is create more frustration and you keep people from  
1250 getting access to the information they need to rely upon to  
1251 make informed decisions. That is why I am proud in both the  
1252 110<sup>th</sup> and 111<sup>th</sup> Congress we in the House have passed my Plain  
1253 Language in Government Communications Act requiring all  
1254 federal agencies to communicate in their publications and  
1255 their web-based services with constituents in the language  
1256 that they can understand, and I would be happy to work with  
1257 you and your agency as they try to adopt some of those best  
1258 practices.

1259 Mr. {Strickland.} Mr. Braley, that will be a great  
1260 opportunity for us, and also I would like to take this  
1261 opportunity to promote the new NHTSA web site at nhtsa.gov.  
1262 We have simplified the web site, made it much more user  
1263 friendly, and I would hope that you and the other members of  
1264 the staff would take an opportunity to go on nhtsa.gov and to  
1265 please give comments on what we have done. We are very proud  
1266 of the work in terms of making it better for the American  
1267 consumer.

1268 Mr. {Braley.} Thank you. I yield back the balance of  
1269 my time.

1270 Mr. {Rush.} The chair thanks the gentleman. The  
1271 gentleman from Michigan, Mr. Stupak, is recognized for 5  
1272 minutes.

1273 Mr. {Stupak.} Thank you, Mr. Chairman. Mr. Strickland,  
1274 when a consumer buys a car and it has an EDR in it should the  
1275 consumer or the owner of that vehicle have access to that  
1276 information?

1277 Mr. {Strickland.} At this point, we are reviewing  
1278 several issues about EDRs and we will have to get back to you  
1279 on the record, Mr. Stupak, but in terms of the privacy issues  
1280 there are several considerations that should be undertaken  
1281 and NHTSA and the Administration are looking at those things  
1282 very closely.

1283 Mr. {Stupak.} Was there anything like proprietary  
1284 information that would be revealed if the consumer had an  
1285 opportunity to look at what was happening with their vehicle  
1286 at the time?

1287 Mr. {Strickland.} I wouldn't be familiar in terms of  
1288 the accessibility of a consumer and what data may be--what  
1289 may be considered proprietary. At this point right now, EDRs  
1290 only track acceleration and braking. I know that there are  
1291 other considerations in the discussion draft which may  
1292 include more information on the EDRs. I will have to get  
1293 back to you on the record for that consideration as well.

1294 Mr. {Dingell.} Would the gentleman yield?

1295 Mr. {Stupak.} Yes.

1296 Mr. {Dingell.} Could you cite any provisions of the  
1297 discussion draft that protect either proprietary information,  
1298 trade secrets or data which is important to the company as a  
1299 competitive matter?

1300 Mr. {Strickland.} There is no language in the draft  
1301 that does any of that, Mr. Dingell.

1302 Mr. {Dingell.} Thank you, and I thank the gentleman for  
1303 yielding.

1304 Mr. {Stupak.} If you go these EDRs, what is the  
1305 difference if I turn on my Sirius radio and I listen to  
1306 certain music, and that is mine, right? I can put in any

1307 station I want on my Sirius radio and listen to it, so my  
1308 EDR, if I want to know how fast I was going or accelerating  
1309 or things like that, why wouldn't I be entitled to that  
1310 information being the consumer, the owner of the vehicle, if  
1311 you will?

1312 Mr. {Strickland.} The owner of the vehicle should have  
1313 access to all aspects of the vehicle in terms of information  
1314 provided. I think that in terms of transparency and clarity,  
1315 I think that for a consumer to have that ability to access  
1316 actually the consumer does have the right to access that  
1317 information. They may not have the tools to get the  
1318 information, but I believe the consumer always has that right  
1319 at this point if I am not mistaken.

1320 Mr. {Stupak.} So if there is an accident like sudden  
1321 unintended acceleration, what right does Toyota have to come  
1322 in and remove that information or withhold that information  
1323 from a consumer?

1324 Mr. {Strickland.} Well, in terms with how that  
1325 interplays, I know the manufacturer has access to data. I  
1326 know that NHTSA has the ability to access the data once we  
1327 get an okay from the consumer. But in terms of preventing a  
1328 consumer from getting the data him or herself or Toyota  
1329 preventing or any manufacturer limiting access to that data,  
1330 I am not as familiar with that process so I will have to get

1331 back to you on the record.

1332 Mr. {Stupak.} Have you demanded the information from  
1333 these recorders on the accidents of a sudden unintended  
1334 acceleration from Toyota?

1335 Mr. {Strickland.} Yes, we have.

1336 Mr. {Stupak.} Have you received it?

1337 Mr. {Strickland.} Yes, we have received it and actually  
1338 in addition to getting that information Toyota has also  
1339 provided several readers. One of the issues that we are  
1340 facing, Mr. Stupak, and I believe those were explained to you  
1341 in the hearing that you held a few weeks back, that there was  
1342 an issue where NHTSA did not have the ability to  
1343 independently read a Toyota EDR. Toyota has since supplied  
1344 us several of their readers so that we can access the data on  
1345 site, and they have been much more proactive in that area.

1346 Mr. {Stupak.} Have you shared this information with the  
1347 victims' families of these sudden unintended acceleration of  
1348 these vehicles? I am thinking especially of the one up in  
1349 New York, the case up in New York.

1350 Mr. {Strickland.} The Harrison, New York case, sir?

1351 Mr. {Stupak.} Right.

1352 Mr. {Strickland.} At this point right now, my  
1353 understanding is that we have that data. We are analyzing it  
1354 for our own investigations. I don't know if there has been

1355 a request made to NHSTA to release that information. I will  
1356 get back to you, sir. I will ask the question of the staff.

1357 Mr. {Stupak.} All right. These new EDR standards, do  
1358 you believe they are sufficient in the proposed bill Section  
1359 107?

1360 Mr. {Strickland.} We are actually taking our own  
1361 independent research on EDR systems, sir. The staff will be  
1362 producing a white paper that hopefully should be available by  
1363 June of this year, which will take a look at several issues  
1364 regarding the sufficiency of the data, the robustness of the  
1365 EDR, and several other considerations, and we will be happy  
1366 to share that with you and the rest of the members of the  
1367 committee, but at this time we are not prepared to make an  
1368 evaluation of the discussion draft mandates regarding--

1369 Mr. {Stupak.} Will you be looking at what other data  
1370 may be useful to you like torquing and arcing on braking in  
1371 vehicles on the roadway?

1372 Mr. {Strickland.} It is a comprehensive review and this  
1373 white paper will take those other considerations into  
1374 account.

1375 Mr. {Stupak.} So on the Toyota, how many pieces of data  
1376 do you receive? You said two, speed and--

1377 Mr. {Strickland.} Speed and braking is whether the  
1378 acceleration was depressed and when the brake was depressed,

1379 that is correct. There is other information available in the  
1380 vehicle as well, Mr. Stupak. The electronic control  
1381 mechanism, ECM, which is independent of the EDR, which can  
1382 also be a very rich trove of information which Toyota has  
1383 shared with us as well, but the actual EDR itself, it is only  
1384 braking and acceleration.

1385 Mr. {Stupak.} Doesn't that seem inadequate? I mean  
1386 these standards were put out some time ago. There were more  
1387 than just two standards in the proposed EDRs that we wanted.  
1388 What, 2013 they were supposed to take effect or, I am sorry,  
1389 2011 and it was pushed back to 2013, is that correct?

1390 Mr. {Strickland.} Actually I think 2012 is actually  
1391 when the voluntary--if you do have an EDR you have certain,  
1392 you know, certain information you have to provide and make  
1393 sure that NHSTA makes it readable.

1394 Mr. {Stupak.} But in that 2012 reader it had to be more  
1395 than just speed and braking?

1396 Mr. {Strickland.} Yes, sir, that is correct.

1397 Mr. {Stupak.} So we should make sure that there are  
1398 more aspects that would be helpful to you and to the consumer  
1399 in these EDRs?

1400 Mr. {Strickland.} We are looking forward to working  
1401 with you and the rest of the committee on this issue, Mr.  
1402 Stupak.

1403 Mr. {Stupak.} Thanks.

1404 Mr. {Strickland.} Thank you, sir.

1405 Mr. {Rush.} That concludes the testimony of the  
1406 Administrator. The ranking member has requested some  
1407 additional time so if the Administrator would agree, we will  
1408 have a second round of questioning for 1 minute, and the  
1409 ranking member is recognized for 1 minute for an additional  
1410 question.

1411 Mr. {Whitfield.} Mr. Strickland, would you please tell  
1412 us when you expect you would be able to give us a section by  
1413 section analysis of this bill?

1414 Mr. {Strickland.} At this point, I know it is currently  
1415 in process within the department and with the Administration.  
1416 My expectation is that hopefully--I will be away on travel, I  
1417 would hope that I would a more specific time frame and answer  
1418 when I return from Asia, so I will be more than happy to  
1419 communicate when we expect to have that review to you, but at  
1420 this time I don't have a specific date when we will have the  
1421 review done.

1422 Mr. {Whitfield.} Well, I urge you all to speed it up  
1423 and provide us with it as soon as possible.

1424 Mr. {Strickland.} Understood, Mr. Whitfield.

1425 Mr. {Whitfield.} One other question. I know that you  
1426 can evaluate each rulemaking and calculate the cost of that

1427 rulemaking or that estimated cost and lives saved. Would you  
1428 be able to do that with this legislation?

1429 Mr. {Strickland.} In terms of doing our normal cost  
1430 benefit analysis of the rule, one thing that we would have to  
1431 make sure that we go through regular order and process in any  
1432 of these rulemakings and find the proper amount of time to  
1433 execute all of the things we need to do for a rule, we are  
1434 evaluating the time frames that are present in the discussion  
1435 draft along with our current rulemaking load. We have other  
1436 rulemakings that are in the queue from other pieces of  
1437 legislation and work we already have done independently so,  
1438 yes, we will need to be able to do that work in order for us  
1439 to justify the rule and we will definitely do so in that  
1440 fashion.

1441 Mr. {Whitfield.} Thank you.

1442 Mr. {Rush.} Are there any other--Mr. Space, do you have  
1443 any additional questions? Mr. Braley, do you have--that  
1444 concludes your time. You have been most gracious with your  
1445 time.

1446 Mr. {Strickland.} Mr. Rush, it is my pleasure and the  
1447 men and women in NHTSA really do thank you for this effort.

1448 Mr. {Rush.} Thank you so much. And the chair now will  
1449 ask the second panel please be seated at the table. The  
1450 chair wants to thank each and every one of you for your

1451 gracious sacrifice of your time. You have been very patient  
1452 with us, and the chair wants to recognize you and thank you  
1453 for it. I want to introduce the panel right now. Beginning  
1454 from my left, a former member of the House of Representatives  
1455 the esteemed Honorable David McCurdy, who now serves as the  
1456 President and CEO for the Alliance of Automobile  
1457 Manufacturers. David, it is good to see you, and welcome  
1458 back to the subcommittee. Next to Mr. McCurdy is Mr. Michael  
1459 J. Stanton. He is the President and CEO of the Association  
1460 of International Automobile Manufacturers. Welcome, Mr.  
1461 Stanton. Seated next to Mr. Stanton is our friend who was  
1462 here before this subcommittee on many occasions, the  
1463 Honorable Joan Claybrook. She is the former administrator  
1464 for the National Highway Traffic Safety Administration.  
1465 Welcome back, Ms. Claybrook. And then seated next to Ms.  
1466 Claybrook is Mr. Clarence Ditlow. He is the Executive  
1467 Director of the Center for Auto Safety. And seated next to  
1468 Mr. Ditlow is Mr. Jim Harper. He is the Director of  
1469 Information Policy Studies for the Cato Institute. Again,  
1470 welcome to each and every one of you. And it is the practice  
1471 of this subcommittee to swear in the witnesses. Will you  
1472 please rise and raise your right hand?

1473 [Witnesses sworn]

1474 Mr. {Rush.} Please let the record reflect that the

1475 witnesses have all responded in the affirmative. And now we  
1476 will recognize Mr. McCurdy for 5 minutes for the purposes of  
1477 opening statement.

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1478 ^TESTIMONY OF THE HONORABLE DAVE MCCURDY, PRESIDENT AND CEO,  
1479 ALLIANCE OF AUTOMOBILE MANUFACTURERS; MICHAEL J. STANTON,  
1480 PRESIDENT AND CEO, ASSOCIATION OF INTERNATIONAL AUTOMOBILE  
1481 MANUFACTURERS; THE HONORABLE JOAN CLAYBROOK, FORMER  
1482 ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY  
1483 ADMINISTRATION; CLARENCE DITLOW, EXECUTIVE DIRECTOR, CENTER  
1484 FOR AUTO SAFETY; AND JIM HARPER, DIRECTOR OF INFORMATION  
1485 POLICY STUDIES, CATO INSTITUTE

|  
1486 ^TESTIMONY OF DAVE MCCURDY

1487 } Mr. {McCurdy.} Thank you, Mr. Chairman, and Ranking  
1488 Member Whitfield, and members of the subcommittee for  
1489 inviting me back to discuss this draft of the Motor Vehicle  
1490 Safety Act of 2010. In the interest of time, I am going to  
1491 request my full statement be admitted in the record, and I am  
1492 going to briefly go through some highlights, if I may. And  
1493 since this is a discussion draft, I hope that this can also  
1494 be a frank discussion because I think we need to get to the  
1495 root of some of these issues. There has been a lot of  
1496 discussion on auto recalls in recent months, so let me start  
1497 by reassuring the American consumer that we are in a historic  
1498 period of auto safety in the U.S., and I think Mr. Whitfield

1499 mentioned some of the statistics about the declining rate of  
1500 traffic fatalities and that our roads are safer today, lowest  
1501 level since 1949.

1502 Consumers are benefitting from many innovative life-  
1503 saving technologies that assist the driver, including the  
1504 electronic stability control, lane department warning system,  
1505 blind spot monitors, and adaptive cruise control. We also,  
1506 if you look at safety in another way, today we see more  
1507 frequent recalls but fewer vehicles are recalled compared to  
1508 a decade ago. That fact suggests that both NHTSA and  
1509 automakers are effectively spotting early warning signs and  
1510 taking faster action. If Congress wants to reassure  
1511 consumers quickly about auto safety, lawmakers should focus  
1512 on three or four of these measures that enhance safety the  
1513 most, and if I may, I will make some recommendations.

1514 First, the Alliance supports a vehicle brake override  
1515 standard that will ensure consumers that they can count on  
1516 their automobiles. Brake override technology is a  
1517 comprehensive solution to unintended acceleration whether it  
1518 is caused by faulty electronics or pedal getting caught in a  
1519 floor mat. Therefore, a pedal placement rulemaking, however,  
1520 would not provide additional safety benefits so brake  
1521 override, yes, pedal safety, redundant. The Alliance  
1522 supports the intent of the keyless ignition system standard

1523 to ensure a consistent means of shutting off an engine during  
1524 an emergency. However, brake override is a preferable  
1525 solution to unintended acceleration. If rulemaking is  
1526 necessary, it should focus on standardizing engine shut off  
1527 procedures and not on design features like the appearance or  
1528 location of the button.

1529         The Alliance supports requiring event data recorders in  
1530 new vehicles, but we are concerned about provisions that  
1531 suggest they should be like black boxes in airplanes. The  
1532 typical airplane black box costs roughly \$22,000, which is  
1533 close to the average price of a new car. In my opinion,  
1534 Representative Green's legislation, H.R. 5169, a member of  
1535 this subcommittee, is a better approach. A proposed  
1536 transmission configuration standard is not necessary because  
1537 such a standard already exists, FMVSS No. 102. The Alliance  
1538 urges Congress to adopt legislation that enhances our  
1539 knowledge and expertise. We support a center for vehicle  
1540 electronics and emerging technologies with NHTSA. Even in  
1541 this partisan environment, this is something we can all agree  
1542 on.

1543         We urge Congress to fund the National Automobile  
1544 Sampling System or NASS, which has shrunk to a third of its  
1545 intended size, important data collection. We also urge  
1546 Congress to fund the Driver Alcohol Detection System for

1547 Safety or DADSS to help identify vehicle technologies that  
1548 can stop drunks from turning on a car and hopefully saving  
1549 many thousands of lives each year. There are always trade-  
1550 offs and competing demands when you are writing legislation.  
1551 Congress will need to balance some of the proposals with  
1552 consumer concerns and marketplace concerns. For example,  
1553 Congress will need to balance the desire for more data with  
1554 privacy protection for consumers. NHTSA spent many years  
1555 assessing the data to be collected by EDRs and we are in the  
1556 middle of a phase-in period for that standard, so we need  
1557 time to assess the impact of the first rule before we start  
1558 writing the next rule.

1559 Congress must also balance the desire for public  
1560 information with valuable product information. The purpose  
1561 of early warning data is to enable NHTSA to identify trends  
1562 and take action sooner, not to create an eBay or Amazon.com  
1563 where competitors can surf for company trade secrets or  
1564 lawyers can shop for clients. Citizens are better served  
1565 when safety legislation empowers engineers, not trial  
1566 lawyers. Congress will need to avoid the possibility of  
1567 creating a system of regulation by litigation. Congress  
1568 should not enact measures that will have the unintended  
1569 effect of slowing and not accelerating action on safety  
1570 matters. If every petition denial is subject to judicial

1571 review, NHTSA will be forced to spend substantial resources  
1572 and time responding to every petition regardless of its merit  
1573 in anticipation of judicial review. This will not serve the  
1574 agency, the industry or the public well.

1575 Finally, Congress will need to preserve basic fairness  
1576 and due process under the law. The Alliance does not oppose  
1577 an increase in civil penalties but penalties must be capped  
1578 at some reasonable level. The proposed 5-fold increase is  
1579 surprising since 2 years ago this committee set a cap at \$15  
1580 million per offense on penalties that could be assessed to  
1581 manufacturers of other types of consumer products. Regarding  
1582 granting NHTSA imminent hazard authority, all I can say is,  
1583 Mr. Chairman, the proposed provisions need further work.  
1584 They are so lacking in standards, and the opportunity to be  
1585 heard before a neutral decision maker as in our opinion to  
1586 violate the due process clause of the U.S. Constitution.

1587 Furthermore, if Congress in my experience has a stick it  
1588 will always want a club. Regarding corporate responsibility  
1589 for NHTSA reports, the proposed personal liability for auto  
1590 executives would be \$250 million. That is 50 times higher  
1591 than for executives under Sarbanes-Oxley, which resulted from  
1592 the Enron scandal where executives went to prison. In  
1593 closing, I know the challenge of getting a consensus. I have  
1594 chaired several subcommittees and a full committee. This

1595 bill can be made stronger by focusing on what is most  
1596 important, and we look forward to working with you to  
1597 identify the key provisions that will actually improve safety  
1598 and benefit consumers. Thank you.

1599 [The prepared statement of Mr. McCurdy follows:]

1600 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
1601           Mr. {Rush.} Thank you very much. The chair now  
1602 recognizes Mr. Stanton for 5 minutes.

|  
1603 ^TESTIMONY OF MICHAEL J. STANTON

1604 } Mr. {Stanton.} Thank you, Mr. Chairman, and thank you,  
1605 Mr. Whitfield. I am Mike Stanton, President and CEO of the  
1606 Association of International Automobile Manufacturers. AIAM  
1607 and its member companies appreciate the subcommittee's  
1608 efforts to improve motor vehicle safety and understand the  
1609 intended benefits of the bill. We also fully support the  
1610 subcommittee's proposal to provide additional engineering and  
1611 related resources to NHSTA including improving the agency's  
1612 vehicle safety database to provide greater public  
1613 accessibility. However, AIAM believes that NHTSA must be  
1614 given the necessary time and flexibility in its rulemakings  
1615 so it can make good decisions. Similarly, manufacturers  
1616 require sufficient lead time to engineer tests and produce v  
1617 vehicles that will meet the new standards.

1618 We are concerned that the rulemaking mandates in the  
1619 draft bill pre-determine conclusions as to matters currently  
1620 under the investigation and not yet fully analyzed by NHTSA.  
1621 As a general matter, it would be more appropriate to direct  
1622 NHTSA to complete its investigations as soon as possible and  
1623 issue rules based upon a full and comprehensive analysis of  
1624 these important safety issues. Regarding the nine mandated

1625 rulemakings in the draft, we defer to NHTSA's judgment as to  
1626 the feasibility of the deadlines for issuing the numerous  
1627 final rules as specified in the bill. However, we note that  
1628 the deadline for many rulemaking mandates appear to be  
1629 unreasonably short and provide insufficient lead time.

1630         Short deadlines can adversely affect the quality of the  
1631 final rule and prior to issuance of a final rule, NHTSA often  
1632 finds it necessary to conduct research to address issues that  
1633 first arise during the rulemaking process. From our  
1634 perspective, if the short deadlines adversely affect the  
1635 quality of the final rules, we all lose. With regard to the  
1636 effective date specified in the bill, we note that while some  
1637 of our members already equip their vehicles with several  
1638 technologies contemplated by this legislation, for example,  
1639 brake override and EDRs, others do not. For those  
1640 manufacturers who do not currently employ these technologies,  
1641 especially some of the small volume manufacturers the  
1642 effective dates specified in the bill are simply not  
1643 feasible.

1644         Even those companies that currently have these  
1645 technologies also need sufficient lead time because there are  
1646 no assurances that these current technologies will be  
1647 consistent with the mandates in the final rule. In addition,  
1648 the draft bill does not provide for the new requirements to

1649 be phased in nor does it provide for phase-in incentive to  
1650 promote early deployment where feasible. It is generally  
1651 more efficient for manufacturers to implement new  
1652 technologies at the time of model changes so that the new  
1653 items can be better integrated than would be the case with  
1654 the purely add-on approach.

1655         With respect to the proposed corporate responsibility  
1656 requirement in Section 305, we have concerns that this  
1657 requirement could significantly chill the speed of the safety  
1658 investigation practices used by some AIAM members and  
1659 introduce non-safety experts into the process. The current  
1660 practice used by some AIAM members separate safety-related  
1661 decisions from financial considerations and intentionally  
1662 excludes these executives. We are concerned that the  
1663 proposal might have the unintended consequence of introducing  
1664 financial considerations inherent when highest ranking  
1665 executives are involved into that safety decision making  
1666 process. We also note that under existing law manufacturers  
1667 are already legally responsible and accountable for  
1668 submitting accurate information to NHTSA. Providing false or  
1669 misleading statements to the federal government is strictly  
1670 prohibited.

1671         AIAM does not believe that requiring a senior official  
1672 to certify responses to safety investigations and other

1673 submissions to NHTSA is necessary or practicable. However,  
1674 if the committee insists on some sort of senior officer  
1675 certification consideration should be given to limiting the  
1676 scope of the certification to formal responses to NHTSA's  
1677 defect determinations. Additional considerations should be  
1678 given to allowing the corporate officers specifically charged  
1679 with safety matters to certify submissions. Mr. Chairman, my  
1680 written testimony provides AIAM comments on most of the  
1681 sections of the bill. I would be more than happy to answer  
1682 questions at the appropriate time.

1683 [The prepared statement of Mr. Stanton follows:]

1684 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|  
1685           Mr. {Rush.} The chair recognizes the Honorable Joan  
1686 Claybrook. Ms. Claybrook, you are recognized for 5 minutes.

|  
1687 ^TESTIMONY OF JOAN CLAYBROOK

1688 } Ms. {Claybrook.} Thank you so much, Chairman Rush, and  
1689 thank you for your work on this bill. I am Joan Claybrook,  
1690 and I am President Emeritus of Public Citizen, and a former  
1691 Administrator of NHTSA. And since I left office in 1981, a  
1692 million people have died in auto crashes and many, many more  
1693 have suffered horrible injuries, many millions more, and a  
1694 cost to the nation of about \$6 trillion. So this is a huge  
1695 issue. In the last 18 months, we have seen some huge  
1696 regulatory failures in this country, whether it has been in  
1697 the massive failure of regulation in the financial sector,  
1698 whether it has been in the case of the Toyota Motor Company,  
1699 whether it has been in the case of the 29 miners who have  
1700 died because of violations in the mining industry, whether it  
1701 has been because of the horrific oil leak explosion and the  
1702 lack of regulation there, and the cost to the nation to  
1703 individual families, to small businesses, have been unending  
1704 and will continue for many years to come for all of these  
1705 families that have been involved.

1706 I say these because of these regulatory failures, this  
1707 corporate malfeasance, this attitude of profits before safety  
1708 and extraordinary loss of life in auto crashes set the back

1709 drop, it seems to me, for the discussion about the need for  
1710 this bill. With strong regulation and enforcement regulated  
1711 companies take fewer risks with the public safety environment  
1712 and money, and I strongly endorse your bill because I think  
1713 that it will help to deal and address some of these issues.  
1714 I do ask that my entire statement be included for the record,  
1715 but I will summarize our particular concerns.

1716         First, I would like to mention in Section 107 the event  
1717 data recorders, which we believe need to be vastly improved  
1718 from those now in practice, and there needs particularly to  
1719 be a single uniform access tool for downloading them. Even,  
1720 you know, there is an issue whether the location should be  
1721 recorded. If you call 911 on your cell phone, they have your  
1722 location, so I don't see why that is an exception. And I  
1723 believe that there needs to be an automatic transmission of  
1724 the data that is collected in the EDR to a NHTSA database  
1725 with privacy protections obviously taken into account. NHTSA  
1726 has been excellent at having privacy protections for all the  
1727 data that is ever used. This feature is important for the  
1728 essential NHTSA data gathering which is expensive and totally  
1729 inadequate to date. The industry and we agree completely on  
1730 improving the NASS system but NHTSA needs real time access to  
1731 on the road information to conduct its research, rulemaking  
1732 and enforcement.

1733           It needs robust and statistically valuable data and this  
1734 can be accomplished as a part of the new EDR requirements.  
1735 As to enforcement authority, I strongly support the new  
1736 penalty provisions and the imminent hazard authority, but I  
1737 urge the inclusion of criminal penalties in this legislation.  
1738 I know there has been some objection and resistance to having  
1739 criminal penalties, but I would just like to point out that  
1740 statutes covering motor carriers, hazardous materials,  
1741 aircraft, oil pipeline, waterfront safety, railroad safety,  
1742 clean water, food, drugs, cosmetics, solid waste, clean air,  
1743 mine safety, occupational safety and health, consumer product  
1744 safety and consumer product hazardous substances, securities,  
1745 antitrust and vehicular homicide all have criminal provisions  
1746 in them, and I don't understand why anyone suggests that  
1747 NHTSA should not as well.

1748           These prosecutions would have to go through the Justice  
1749 Department, which has a very high standard for intent and  
1750 there would have to be knowing and willful, so I think it  
1751 ought to be included in this legislation. We support the  
1752 transparency provisions in the legislation because the  
1753 encourage and assist the public in reporting safety problems,  
1754 and we support the judicial review for a public petition for  
1755 recall. The industry talks about wanting due process for  
1756 itself. We want due process for consumers. Without the

1757 opportunity for oversight, the agency can ignore its  
1758 obligations and it indeed has in the past. It is unlikely  
1759 that this provision would be used often because it is  
1760 expensive to bring such suits, but it is important.

1761         And I do endorse adjustments to this section in addition  
1762 clarifying that lawsuits--in the transparency section that  
1763 lawsuits should be separately reported from vague claims of  
1764 letters under early warning, that categories of defective  
1765 elements of a vehicle should be vastly enlarged so the public  
1766 knows what we are talking about, that we should make public  
1767 reports that manufacturers have of deaths under early  
1768 warning, and that collecting the names and addresses of after  
1769 market tire purchasers should be included that they can be  
1770 notified about recalls which they cannot be now, and to  
1771 require NHTSA to fully document meetings with interested  
1772 parties when they have them, which they haven't been doing.  
1773 As to funding, we think the agency is starving to death. The  
1774 whole budget is \$132 million. It needs to be vastly  
1775 increased, and it should be \$500 million a year, and so we  
1776 hope that that will happen under your jurisdiction.

1777         And, finally, I do have in my statement, I won't mention  
1778 them specifically, but I think there are three things that  
1779 are included for the integrity of the agency, and that is not  
1780 having a facility that is owned by an auto manufacturer

1781 having whistleblower protection and having revolving door  
1782 protection. Thank you very much, Mr. Chairman.

1783 [The prepared statement of Ms. Claybrook follows:]

1784 \*\*\*\*\* INSERT 4 \*\*\*\*\*

|  
1785           Mr. {Rush.} Thank you very much. The chair now  
1786 recognizes Mr. Ditlow for 5 minutes.

|  
1787 ^TESTIMONY OF CLARENCE DITLOW

1788 } Mr. {Ditlow.} Thank you, Mr. Chairman, and members of  
1789 the committee. I am Clarence Ditlow, Executive Director of  
1790 the Center for Auto Safety, a small group that has watch  
1791 dogged the National Highway Traffic Safety Administration for  
1792 40 years now. We deeply appreciate the effort that went into  
1793 drafting the proposed Motor Vehicle Safety Act of 2010 and  
1794 both consumers and auto companies alike will benefit from  
1795 fundamental reforms to the National Traffic and Motor Vehicle  
1796 Safety Act. Indeed, when you look at NHTSA it is a wonderful  
1797 agency. It has a vital mission but it is woefully  
1798 underfunded, woefully understaffed, and outgunned by the  
1799 industry it regulates. To expect today's NHTSA to adequately  
1800 regulate the trillion dollar auto industry is like asking a  
1801 high school basketball team to beat the LA Lakers.

1802 Unlike other public health and safety agencies NHTSA  
1803 doesn't even have its own research facility. Instead, it  
1804 must rent space at a facility owned by Honda. Now when we go  
1805 back and look at the original agency, it was much better  
1806 equipped to handle regulating the auto industry than today's  
1807 agency. Today, there are twice as many vehicles. There are  
1808 twice as many vehicle manufacturers. And the motor vehicles

1809 themselves are probably four times as complex as the motor  
1810 vehicles that were on the roads in the 1960s and 1970s when  
1811 the agency was formed.

1812         The original agency had a research program that did  
1813 things like research on advanced air bags, a research safety  
1814 vehicle. It did more research on electronic controls in  
1815 vehicles in the '70s than it did in the '80s or '90s. That  
1816 budget, those resources, they led to advanced safety  
1817 standards like the air bag standard. The auto industry went  
1818 from a company that couldn't dislike air bags more than--an  
1819 industry that today they want to sell as many cars as they  
1820 can with air bags and use those air bags to promote the sale  
1821 of motor vehicles. It is an example safety does sell. What  
1822 has happened though is that the safety system at the agency  
1823 has significantly broken down, if we look just at the defects  
1824 and recalls division, it used to be that the whole process  
1825 was open. You could go in and look at citizen complaints.  
1826 You could go in and look at warranty data. You could look at  
1827 the files and rebut what the manufacturers were saying.  
1828 Recalls and investigations took place in a much shorter  
1829 period of time.

1830         We had the General Motors sudden acceleration problem  
1831 due to failing engine mounts. From the time the  
1832 investigation was open to 6.7 million vehicles were recalled

1833 was less than a year. GM didn't suffer in sales like Toyota  
1834 did. And today what we have is investigations that go  
1835 forward go on forever almost, and we have multiple recalls.  
1836 The consumer is dismayed, the manufacturer loses sales. And  
1837 when we look at the early warning system, the early warning  
1838 system has actually made the investigatory process worse.  
1839 Things that used to be public are not public anymore. You  
1840 can't tell how many deaths and injuries that there are on  
1841 Toyotas. There were 301 death and injury summary reports  
1842 filed to NHTSA but only 15 were requested. All death reports  
1843 should be made public.

1844 I have concentrated primarily on some of the openness  
1845 and transparency. I want to say to Mr. McCurdy in the  
1846 history of the agency we have 23 years when there was  
1847 judicial review of agency decisions on defects, and in 23  
1848 years there were only two court challenges, scarcely a  
1849 burden, and what you will find is a check and balance that is  
1850 needed. When we go forward with rulemakings under this, we  
1851 are going to have a situation where we are correcting the  
1852 catch-up. The agency is behind. The agency needs more  
1853 research, more funds. Just looking at the accident  
1854 investigations alone, there is only \$15 million. We need \$60  
1855 million for accident investigations in this country, and they  
1856 can catch defects like Toyota.

1857           So when I look forward to the future, this legislation  
1858 provides a unique opportunity to not only reduce the  
1859 unacceptable tolls of deaths and injuries on the nation roads  
1860 but also to provide stability to the auto industry which  
1861 suffers from lack of public confidence and sales when  
1862 preventable defects such as Toyota's sudden acceleration  
1863 occur. The federal government through NHTSA should lead the  
1864 way to vehicle safety, not come on after the fact and try to  
1865 clean up on this. So I thank you for your time.

1866           [The prepared statement of Mr. Ditlow follows:]

1867           \*\*\*\*\* INSERT 5 \*\*\*\*\*

|  
1868           Mr. {Rush.} The chair now recognizes Mr. Harper. Mr.  
1869 Harper, you are recognized for 5 minutes.

|  
1870 ^TESTIMONY OF JIM HARPER

1871 } Mr. {Harper.} Thank you, Mr. Chairman, Ranking Member  
1872 Whitfield, and members of the committee, I am very pleased to  
1873 be here. My name is Jim Harper. I am Director of  
1874 Information Policy Studies at the Cato Institute. I am  
1875 delighted for the opportunity to testify about the Motor  
1876 Vehicle Safety Act draft, and particularly Section 107.  
1877 Until a decade ago when I left the Hill, I was a Judiciary  
1878 Committee guy. I hope you won't hold that against me. I do  
1879 believe maybe the substance of my testimony will be what you  
1880 hold against me. Before I turn--

1881 Mr. {Rush.} We will try not to hold that against you.

1882 Mr. {Harper.} I appreciate that. Before we turn to the  
1883 privacy issues at play with EDRs, I will make two  
1884 observations that are really straight out of the skunk at the  
1885 garden party file. Across the country today, Americans are  
1886 re-reading the Constitution and they are trying to square  
1887 what it says with the activities of Congress. I fully  
1888 acknowledge the good intentions, of course, of everybody  
1889 involved in auto safety issues, but I have a hard time  
1890 finding that to be a federal government responsibility. The  
1891 Constitution's grant of authority in the commerce clause was

1892 aimed at making commerce among states regular ending the  
1893 trade wars that had broken out among the states in the  
1894 Articles of Confederation.

1895 Framers did not intend for the Congress to regulate the  
1896 quality and caliber of goods and services traded in the  
1897 United States. My quick study, necessarily quick study, of  
1898 the economics of Section 107 dealing with EDRs draws me to  
1899 doubt whether installing event data recorders in all cars  
1900 sold in the United States is a cost effective auto safety  
1901 measure. Driving the cost of new cars higher raises the cost  
1902 of used cars because it limits the market of used cars as  
1903 people don't trade up. Under the, I think, entirely  
1904 plausible assumption that newer cars are safer than older  
1905 ones raising the prices of cars with EDR technology keeps  
1906 poorer people in older, less safe cars. Now, of course, that  
1907 is not to say that analyzing data is a mistake. Good data  
1908 will improve auto safety but almost certainly sampling auto  
1909 crash data using EDRs in a cross section of cars would  
1910 provide safety benefits without the cost of mandating EDRs  
1911 for all cars sold in the United States.

1912 My analysis of the economics is worth the money you are  
1913 paying for it, of course, but I want to highlight that there  
1914 are trade-offs here and it would be regrettable if large  
1915 societal investments in EDRs and EDR data drove up costs and

1916 kept the company's poorer drivers from trading up endangering  
1917 their lives for the benefit of the wealthy drivers who buy  
1918 new cars. I will turn to privacy, and there is no issue more  
1919 complicated than privacy, of course. Privacy in its  
1920 strongest sense, the word privacy means the ability to  
1921 control information about one's self. I believe the  
1922 protections for EDR data stated in Section 107 may help  
1923 clarify the privacy issues around EDR data and still provide  
1924 a small benefit in terms of privacy protection, but control  
1925 also comes from having a say in the information  
1926 infrastructure around you and what data collection happens in  
1927 your car, in your home when you use your computer, and so on.

1928 Consumers today have no control and little awareness of  
1929 EDRs in their cars. They can't control the presence of EDRs  
1930 or their functioning. There are shades, unfortunately, in  
1931 Section 107 of too little, too late in terms of protecting  
1932 consumer privacy. Consumers should have a say in the first  
1933 instance of whether data is collected. Society wide data  
1934 collection and use will continue to grow. In our society  
1935 down the road the capacity of EDRs will grow undoubtedly.  
1936 EDR data will integrate with other data collected and used by  
1937 the automobile, and EDR data will regularly be used in  
1938 litigation and for many other purposes. Your car is a  
1939 computer, but if you have almost no control of what that

1940 computer does your privacy is very much threatened.

1941           Think of EDRs in the near future as an ankle bracelet  
1942 that all drivers will have to wear just for getting behind  
1943 the wheel. We are talking about a loss of privacy and  
1944 autonomy in developing this kind of data infrastructure  
1945 without consumer input or control. Without doubt, there is  
1946 no doubt in my mind, of course, everyone is trying to do the  
1947 best for auto safety and consumer welfare over all, but  
1948 consumer welfare involves the freedom to live as you want  
1949 unmonitored. I will brag slightly that I rebuilt a few  
1950 engines when I was in high school. I am proud to report both  
1951 of them ran when I was done with the process. There is no  
1952 reason on God's green earth why a 429 4-barrel and 1973  
1953 Mercury Montego should have a double roller timing chain but  
1954 mine did, and I was proud of it.

1955           I miss the day, frankly, when people could tinker with  
1956 their cars, make their cars an expression of themselves. It  
1957 may be computer geeks in the future that want to tinker with  
1958 their cars and with the data in computing power in their  
1959 vehicles make those cars something special. But I think that  
1960 freedom consistent with safety should continue to exist.  
1961 Thank you very much for hearing me out.

1962           [The prepared statement of Mr. Harper follows:]

1963 \*\*\*\*\* INSERT 6 \*\*\*\*\*

|

1964           Mr. {Rush.} That concludes the opening statements of  
1965 the witnesses. And I have a question that I want to ask all  
1966 the witnesses to respond, if you will. A lot of ink has  
1967 flown on this topic of automobile safety. There has been  
1968 additionally several informative oversight hearings held in  
1969 light of the Toyota incident. We have all come to the  
1970 conclusion that NHTSA needs to be recalibrated, needs to be  
1971 remade. We need new model for NHTSA, an upgraded model for  
1972 NHTSA, and it needs to be energized, it needs to be equipped  
1973 to achieve its primary goal of securing public safety on the  
1974 highways. And I just have a question, a general question for  
1975 each and every one of you. In an immediate sense in a  
1976 nutshell what is the best possible piece of legislation that  
1977 you would envision? In other words, what in your words and  
1978 your viewpoints, what is the provision that must exist in any  
1979 kind of refurbishing of NHTSA and what provisions must not  
1980 exist? Each one of you, would you--David wants me to start  
1981 with you, Mr. Harper. Would you please be so kind?

1982           Mr. {Harper.} I am not a NHTSA expert, and I apologize  
1983 for that, but I think two laws that are very important in  
1984 this area that relate to some of what I said are the  
1985 Regulatory Flexibility Act, which requires economic analysis  
1986 of major rules, rules of having a consequence of more than

1987 \$100 million, and I think the analysis should include what  
1988 the potential costs of all mandates in the bill are,  
1989 regulatory mandates, so that we can understand that if car  
1990 prices are rising so high that it prevents a used car market  
1991 from emerging. There are kids today driving around in cars  
1992 from the '70s, and when they get in an accident those cars  
1993 are more likely to get in accidents because of age and design  
1994 flaws from the past.

1995           When they are in accidents they are likely to suffer  
1996 more injuries just because newer cars have better safety  
1997 features in them, so we have got to consider getting people  
1998 out of older cars into newer cars and that is done by making  
1999 sure that cars are relatively inexpensive, so there are  
2000 trade-offs here. The reg flex act would be involved in that.  
2001 Another is the Government Performance and Results Act. The  
2002 Results Act was just getting started when I was on the Hill,  
2003 and I recall NHTSA being an example of an agency that did a  
2004 pretty good job of measuring results per dollar. It is a lot  
2005 easier than rating components of the Justice Department where  
2006 you are trying to measure justice in terms of per dollar.  
2007 You can't do it. But traffic statistics you can do per  
2008 dollar and I think continuing that would be important.

2009           Mr. {Rush.} Mr. Ditlow, do you have any concise  
2010 comments?

2011 Mr. {Ditlow.} Mr. Chairman, I think that the  
2012 transparency and oversight provisions are the most important  
2013 because you can--when you look at issuing new standards, we  
2014 need them. There is no question about it. But I am looking  
2015 at the past 40 years of this agency and there needs to be a  
2016 public oversight to hold the agency accountable to enforce  
2017 the laws that are there. And, unfortunately, we don't have  
2018 the access today that we once had so creating the  
2019 transparency of how the agency functions, the data that  
2020 should be public but is not public, and then the right to  
2021 judicially challenge the decisions of the agency, that is  
2022 what will make the agency work for the future. It is the age  
2023 old story, you can tell the agency to do something but how do  
2024 you tell them to do a good job. It is the citizen that is  
2025 going to make the agency do a good job.

2026 Mr. {Rush.} Thank you. Ms. Claybrook, I can't wait for  
2027 your answer.

2028 Ms. {Claybrook.} Thank you so much, Mr. Chairman, for  
2029 asking the question. I would say that the resources for the  
2030 agency are totally essential, that this agency is starving to  
2031 death, as I mentioned. \$132 million is ridiculous to expect  
2032 it to do its job. And so I think this bill should not be  
2033 passed without a goal of \$500 million a year annual budget  
2034 for the agency in the next 4 years. So I would say an

2035 increase each year of \$100 million on top of the prior year.  
2036 That is the only way this agency is going to have the  
2037 capacity to do the job that you and I expect it to do. What  
2038 it shouldn't have, in my view, is a situation where it has  
2039 conflicts of interest. I think that it should not have a  
2040 test facility owned by a manufacturer. I think it is a  
2041 terrible conflict of interest so that that is something that  
2042 is not in the bill. I think it should be added to the bill.  
2043 I think that there should be criminal penalties.

2044 Mr. {Rush.} Thank you. Mr. Stanton.

2045 Mr. {Stanton.} Yes. Thank you for the question. I  
2046 think I have been in the industry almost as long as most of  
2047 the people up here, maybe not quite as long, but I remember  
2048 very vividly when years ago when seat belt use was 12 percent  
2049 and now we are up to over 90 percent, so we have made  
2050 tremendous, tremendous progress in this whole area. And cars  
2051 have gotten so much more complicated over the last 30 years,  
2052 and we have argued and have lobbied not as successfully as I  
2053 would like to say for additional funds for NHTSA when it  
2054 comes to NASS, the NASS system and the FARR system. NHSTA  
2055 needs to be a data-driven organization, and to the degree  
2056 that we can get them a greater amount of better data the  
2057 better off we all are going to be. And then the final point  
2058 is that the rulemakings that NHTSA undertakes, they really

2059 have to be an open process and they really cannot have the  
2060 final rule in sight when you start the process. You are not  
2061 being data driven if you do that.

2062 So the degree that they can go through the rulemaking  
2063 process, have it open, have the record dictate what the final  
2064 rule looks like and when it ought to be implemented given  
2065 into consideration the implementation schedules required by  
2066 automobile manufacturers we end up with a better product.

2067 Mr. {Rush.} Mr. McCurdy, do you want to answer this?

2068 Mr. {McCurdy.} Yes, Mr. Chair. I wasn't completely  
2069 deferring. I was just suggesting an order here. Mr.  
2070 Chairman, the rule of thumb I have always used on legislation  
2071 is if you have had hearing and you identify the problem then  
2072 address the problem very clearly and simply. And we made  
2073 some recommendations in our testimony those areas that  
2074 address the particular problem that this committee and  
2075 Congress has identified. We are not into re-litigating and  
2076 going back to decisions on judicial review that was made in  
2077 1988 by courts. What we would like to do is work with you to  
2078 see how we can make this a bipartisan approach that uses  
2079 common sense to really address the underlying problems. And  
2080 I think you have the basis there. Again, there are some key  
2081 elements that--some real makings at NHTSA.

2082 And my last comment on this, I do not believe that NHTSA

2083 is broken. You used a car metaphor when you talked about a  
2084 new model. It takes about 5 to 7 years for the industry to  
2085 create a new drive train or a new model. You don't need to  
2086 go through that. I think there are some tweaks here that you  
2087 can address, and I think that--and we agree that it needs to  
2088 be adequately resourced. The center is a good idea. There  
2089 are some very important studies that are going to take place  
2090 that we are anxious to see what those results are which  
2091 provide data. The National Academy of Sciences and even  
2092 NASA's recommendations I think will have real impact and help  
2093 this committee do its work as well.

2094 Mr. {Rush.} Thank you. The chair now recognizes the  
2095 gentleman from Kentucky for 5 minutes.

2096 Mr. {Whitfield.} Thank you all for your testimony. In  
2097 reading your testimony and also in your verbal response to  
2098 questions, there has been a number of references to these  
2099 studies that are ongoing by NASA and by the National Academy  
2100 of Sciences. Are those ongoing because of a contract with  
2101 NHTSA or are these being conducted by contracts with the  
2102 automobile manufacturers?

2103 Mr. {Stanton.} It is through NHTSA. It came about as a  
2104 requirement from the Toyota investigations and the need for  
2105 additional knowledge and DOT then contracted with NASS and  
2106 NASA.

2107           Mr. {Whitfield.} Because as someone who really doesn't  
2108 understand cars, it seems like this pedal placement standard  
2109 and transmission configuration standard when you think about  
2110 the vast variety of vehicles it would be difficult to come up  
2111 with a uniform standard very quickly, and I think that the  
2112 Administrator of NHTSA indicated that he did not think that  
2113 they could meet the time frames in here. Do you all--how  
2114 many of you believe that NHTSA could meet the time frames for  
2115 the regulations called for in this legislation?

2116           Mr. {McCurdy.} As my colleague, Mr. Stanton, mentioned  
2117 there are nine mandates in different rulemakings and we  
2118 believe--and the Administrator admitted this was too  
2119 compressed. Again, I don't think you have to have that many  
2120 rulemakings. I don't think you have to--those will not  
2121 address the problem that really was with Toyota. Brake  
2122 override will address that. It is preferable to have a  
2123 placement or the other approach which again there is a  
2124 certain overreach in the drafting. And I understand  
2125 positional negotiation and obviously the Administrator was  
2126 asked the question what all he would like to see in this bill  
2127 or did he cover, and he said it captures the universe. Well,  
2128 it really does capture the universe. It is very broad. I  
2129 think you need to narrow it now in order to get those real  
2130 problems addressed. I think a very straight rulemaking on

2131 one or two items can address it.

2132 Mr. {Whitfield.} Ms. Claybrook, what do you think? Do  
2133 you think that NHTSA can meet these deadlines?

2134 Ms. {Claybrook.} Well, they are certainly going to need  
2135 a lot more resources in order to do so. I would say that. I  
2136 think they are very tough deadlines. I think that they are  
2137 important though. I don't think that the brake override  
2138 solves the problem. The brake override is like a safety  
2139 protection if you have a problem, but it doesn't solve the  
2140 problem. What you need to solve the problem is to change the  
2141 electronics and improve the electronics in the vehicles  
2142 themselves. And so I think that these standards are really  
2143 important for the agency to address. The reason they have  
2144 deadlines in them is because the agency has taken years and  
2145 years and years in the past to do its job, and so there is a  
2146 lot of frustration with that and with the endangerment of the  
2147 public that occurs when they don't act.

2148 Mr. {Whitfield.} I personally--yes, Mr. Stanton.

2149 Mr. {Stanton.} Just real quickly. There is already a  
2150 standard FMVSS on the transmission and it has to be  
2151 intuitively correct, so there is some work that has already  
2152 been done on that. But I don't think that there is any way  
2153 in the world that you could anticipate what the requirements  
2154 are going to be, what the rulemaking outcome should be.

2155 Take, for example, your pedal and brake interface. What does  
2156 that mean? How are they going to deal with that? Are they  
2157 going to move the break pedal further away from the gasoline  
2158 pedal? And then what is the implication of that on safety  
2159 and what does it mean to the floor plan of the vehicle? And  
2160 then how do you do that in 2 years? That is not good  
2161 government.

2162 Mr. {Whitfield.} Do you have those concerns, Mr.  
2163 Harper?

2164 Mr. {Harper.} I do. If you look at some of these,  
2165 there is a great deal of information the agency already has.  
2166 There was a year long study done through the Volpe Center on  
2167 the brake pedal placement. There are certain recommendations  
2168 that they have made. And then when you look at all nine  
2169 standards there is provision for the agency that if they  
2170 can't meet the deadlines to come back to the Hill and inform  
2171 the Hill of that. And that happened with the roof standard  
2172 that was just here last year and we got a much better  
2173 standard out of it.

2174 Mr. {Whitfield.} Mr. Harper, do you want to comment?  
2175 Okay. Let me ask one other question, and I see my time is  
2176 about to run out. The judicial review for a defect petition  
2177 rejection and trying to stay in imminent hazard order the  
2178 judicial reviews are different. In one you go to U.S.

2179 District Court and the other you go to the U.S. Court of  
2180 Appeals. Does the fact that these judicial review procedures  
2181 are different, is that of concern to any of you?

2182 Mr. {Stanton.} I guess I would say that the way that  
2183 they are handled is problematic in both cases for different  
2184 reasons. Certainly the judicial review on imminent hazard is  
2185 a deviation from what is under the CPSC and the other area  
2186 where the agency would have to go to court to get the teeth  
2187 and ability to do it. But the judicial review on the other  
2188 side is for both defects, rejections, and also for new  
2189 standards. Now we are concerned that you could have a lot of  
2190 people that would like to see a new standard that NHTSA would  
2191 really not for good reason not want to promulgate and yet  
2192 they have now devoted to the court, and we think it ties up  
2193 the agency, will tie up the lawyers and not get the job done.

2194 Mr. {Whitfield.} Thank you, Mr. Chairman.

2195 Ms. {Claybrook.} If I could just comment on that. I  
2196 would just comment not on the need for them but on just the  
2197 procedure which is that I think under the imminent hazard  
2198 provision you would have to have some kind of a mandatory  
2199 agency hearing of some sort so that there would be a record  
2200 before they would go to the Court of Appeals so I just  
2201 comment on that.

2202 Mr. {Ditlow.} The provision for review of defect

2203 petition is limited to that defect petition. We have 23  
2204 years of experience where there was judicial review until the  
2205 court in 1988 said there was no law to apply, and yet we only  
2206 had two lawsuits, and one of those lawsuits actually resulted  
2207 in the Kelsey-Hayes landmark decision where instead of  
2208 recalling 50,000 GM pickups with a camper body, they recalled  
2209 200,000 because all the wheels on any of the GM pickups could  
2210 fail. So it has worked, and what we would like to do is just  
2211 reinstate it.

2212 Mr. {Rush.} Mr. Braley, you are recognized for 5  
2213 minutes.

2214 Mr. {Braley.} Thank you, Mr. Chairman. Mr. Harper, I  
2215 took note of your testimony talking about people who are  
2216 foregoing new purchases, remaining in older cars which in  
2217 many cases are more hazardous to operate on the roadways of  
2218 this country, and the effect of that in terms of greater  
2219 morbidity and mortality. This came up during the Cash for  
2220 Clunkers debate because as one of the original co-sponsors of  
2221 that bill a lot of us felt like we could have done more in  
2222 terms of giving incentives for people to get older cars, used  
2223 cars, off the road and replacing them with higher quality  
2224 used cars in addition to new cars. And one of the things  
2225 that Consumer Reports mentioned was that a benefit that few  
2226 people talk about from that Cash for Clunkers program was a

2227 dramatic improvement in vehicle safety from those older cars  
2228 that were being taken off the road and replaced with some  
2229 that had some of the safety components that Mr. McCurdy  
2230 referred to in his opening statement, that consumers are  
2231 benefitting from a range of innovative new safety  
2232 technologies. So I think one of the things we have to be  
2233 doing as we set policy outside the scope of NHTSA is also  
2234 looking at ways to provide incentives to people who because  
2235 of their economic circumstances are stuck in these older  
2236 vehicles. We see this in the real world environment.

2237         And I think that is something that goes beyond partisan  
2238 politics and get to the root cause of how we provide people  
2239 with a better occupant compartment. But I would like Ms.  
2240 Claybrook to comment on the privacy concerns that Mr. Harper  
2241 raised because my understanding of privacy is that it goes to  
2242 an expectation of privacy that in order to have a basic right  
2243 to assert a claim based on privacy you have to have an  
2244 expectation in that time, manner, and place that there is a  
2245 privacy concern to protect. In order to be in one of these  
2246 vehicles with an EDR device in it, you have to be licensed  
2247 and given the privilege of operating a motor vehicle. So I  
2248 would like you to respond because in one of the points you  
2249 raised you talked about the necessity for mandating recording  
2250 of these incidents, and I would like you to respond to that.

2251 Ms. {Claybrook.} Well, I can tell you that NHTSA has  
2252 incredible privacy protections built into all of its  
2253 operations and particularly for any investigation that is  
2254 done of any crash. They have been doing this for 45 years,  
2255 and as far as I know there has never been any disclosure in  
2256 all that time of the thousands and thousands of crashes they  
2257 have investigated of any problem, and that is not something  
2258 that necessarily people would even have an expectation about  
2259 because they don't necessarily know that their crash is going  
2260 to be investigated. With regard to EDRs, every consumer  
2261 should have in the owner's manual and I believe even more  
2262 prominently in the vehicle when they buy it an indication  
2263 that they have an EDR so that they know they have one that  
2264 they have the right to have that information. They own that  
2265 information, in fact.

2266 What I have suggested in addition is that there be an  
2267 electronic transmission of just the data, not the private  
2268 information of who owns the car or the name of anybody to the  
2269 agency so that it can have real time data to do its job, and  
2270 this where Mr. Stanton and I completely agree. We think that  
2271 the agency needs much more data, and if we can send a  
2272 satellite up and we can download data from that satellite or  
2273 if we can send people to the moon and talk to them from NASA  
2274 while they are up there, it seems to me we can download data

2275 from an EDR. So the technology is certainly available. It  
2276 is just a matter of the will to do it and to do it in a way  
2277 that does not harm any person.

2278 Mr. {Braley.} And that goes to one of your related  
2279 recommendations in that the third item you mentioned was the  
2280 access tools be commercially available, which is a current  
2281 standard. We have to have a uniform system for recording and  
2282 extrapolating the information. This is the same problem we  
2283 faced, by the way, with electronic health care records and  
2284 the problem we are having with the ability to share  
2285 information that can help us transform the way we learn from  
2286 the health care that is being delivered in this country. One  
2287 of the other questions I wanted to ask you about has to do  
2288 with the reporting of lawsuits of part of the early warning  
2289 system, which is not currently required. The reason I don't  
2290 understand why that was not part of the original requirement  
2291 is if you look at the parallel problem of reporting incidents  
2292 of preventable medical errors under the national  
2293 practitioner's database they are required to report both  
2294 claims that are reported under any system as well as lawsuits  
2295 are filed, and that is part of a comprehensive effort to  
2296 improve patient safety. Wouldn't that same logic apply in  
2297 this setting?

2298 Ms. {Claybrook.} Absolutely, and, in fact, we ask the

2299 agency to include a separate listing of when lawsuits are  
2300 filed because if someone just writes a letter to an auto  
2301 company and says, well, I am thinking about making a claim  
2302 against you because I have been harmed from a defect in your  
2303 vehicle, it is an entirely different thing than if a lawsuit  
2304 has actually been filed because these lawsuits are  
2305 complicated, difficult, expensive, and people don't file them  
2306 unless they have a real view that they could win these  
2307 lawsuits because they are taken on a contingent fee basis by  
2308 the lawyer who doesn't want to have to end up paying a lot of  
2309 money to do it and then not winning the lawsuit.

2310         It is entirely different in terms of the seriousness of  
2311 that issue, and so I think that separately reported from just  
2312 claims ought to be lawsuits filed on any particular make,  
2313 model or alleged defect that is reported under the early  
2314 warning system. And it is just a number of lawsuits. It is  
2315 not anything else. It is just a number. And so the consumer  
2316 knows when they go on the database they could look and see  
2317 here is my make, model. There is an alleged defect. That is  
2318 the same problem I had. And, by the way, there are two  
2319 lawsuits that have been filed or there are 20 lawsuits that  
2320 have been filed, whatever it may be. That is going to inform  
2321 them a lot more about the seriousness of this issue than just  
2322 that there is a bunch of claims that have been perhaps

2323 discussed.

2324           Mr. {Braley.} Thank you. I yield back the balance of  
2325 my time.

2326           Mr. {Rush.} The chair thanks the gentleman, and the  
2327 chair thanks all the witnesses. There is a vote occurring on  
2328 the floor so with that said, we are going to adjourn the  
2329 panel. And thank you again for your time that you have  
2330 invested in this hearing and this legislation. Thank you so  
2331 very much. The committee now stands adjourned.

2332           [Whereupon, at 2:15 p.m., the Subcommittee was  
2333 adjourned.]