July 21, 2010

The Honorable John D. Rockefeller IV
Chairman
Committee on Commerce, Science
and Transportation
U.S. Senate
Washington, DC 20510

The Honorable Henry A. Waxman
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Kay Bailey Hutchison
Ranking Member
Committee on Commerce, Science
and Transportation
U.S. Senate
Washington, DC 20510

The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairmen Rockefeller and Waxman and Ranking Members Hutchison and Barton:

Public hearings held by your committees brought to light tragic sudden acceleration crashes that may be associated with 93 fatalities and thousands of consumer complaints. The Committee hearings revealed serious abuses and acts of omission and commission by both Toyota and the National Highway Traffic Safety Administration (NHTSA). The testimony at your hearings revealed callous indifference by the manufacturer, misconduct by corporate officials who failed to provide accurate and complete information to government investigators, the use of ex-NHTSA employees to influence the defect investigation conducted by their former colleagues and the failure of the agency to exercise due diligence and basic oversight of a lethal safety defect. The Motor Vehicle Safety Act of 2010 reported by your committees is a significant and overdue response to the safety problem and issues identified. We commend you for your leadership.

Yet, after already obtaining compromises in numerous important provisions of the bill, the car companies have joined forces with a myriad of auto suppliers, dealers and the U.S. Chamber of Commerce in an attempt to further eviscerate this Act. Already, the car companies have managed to avoid inclusion of the following important responsibilities in the original bills:

* Requirements for issuance of the pedal placement and electronics systems performance standards in the House bill were made discretionary rather than mandatory, and the standards for pedal placement, transmission labeling and push button ignition systems are now discretionary in the Senate bill;

* All requirements for lead time for implementation of new safety rules were deleted from both the Senate and House bills;

* Maximum civil penalty caps of $200 million in the House and $300 million in the Senate were inserted in the legislation even though there is a separate maximum limit of $25,000 per violation;

* Penalties for submission of false information by corporate officials to NHTSA were drastically reduced from $50,000 per day and a maximum of $250 million to $5,000 per day and a maximum of $5 million in the House bill, and to a maximum of $10 million in the Senate, and in the House bill only a corporate employee, not a corporate officer, can be held accountable for submitting false, misleading and incomplete information;

* The specific requirements for collection of data electronically in a crash were watered down and collection of rollover crash data in crashes that kill 10,000 people a year is still discretionary;

* Industry objections to important additional consumer and safety protection to provide public disclosure of early warning death reports, clarification of safety defect reporting requirements by type of vehicle system, and disclosure of private meetings between NHTSA and company officials on pending defect and enforcement proceedings have been kept out of the legislation.

Now, in a July 15, 2010 letter to your committees, the auto manufacturers and their allies have suddenly accelerated their demands and are asking Congress to eliminate some of the most critical provisions in the Act.

In House Bill 5381 the car companies want to eliminate:

Section 201: Public Availability of Early Warning Data (EWD)

After documented evidence that Toyota completely ignored its responsibilities under current EWD requirements, these companies have the audacity to suggest that this information should continue to be secret. While offering the standard protections for company confidential trade secret information, Section 201 requires NHTSA to make conduct rulemaking to determine what categories of information to make public. More public disclosure will enable the American public to have access to critically important safety information and rebuild confidence in NHTSA. Not making information available only perpetuates the cozy relationship between NHTSA and the car companies that enabled the Toyota crisis in the first place.

Section 206: Appeal of Defect Petition Rejection

For 22 years, from 1966 through 1988, NHTSA decisions to deny defect petitions and close investigations without recalls were subject to judicial review in federal court. Yet only two cases were litigated during that period. The first case led to the landmark decision defining what constitutes a safety defect. The "Kelsey Hayes Wheels" case (*U.S. v General Motors Corp.*, 518 F.2d 420 (D.C. Cir. 1975)), which established the proposition that a defect can be proven based on a non-*de minimus* number of failures without any showing of a specific defect, involved a small, limited recall of wheel failures of GM pickups with camper bodies. That decision, which led to a much broader recall, would never have been issued if judicial challenges to the agency's rejection of a defect petitions had not been permitted at the time. Contrary to what the auto companies allege, the second case, *Center for Auto Safety v Dole*, 846 F.2d 1532 (D.C. Cir. 1988), resulted in an initial decision *in favor of reopening the investigation* but was later reversed on the grounds that the petitioners lacked standing to sue – which the House bill would correct.

Section 301: Vehicle Safety User Fee

Every time an American consumer buys a car, the car companies and dealers exert extraordinary pressure on the consumer to overpay for unneeded products. Extended service

contracts are marked up 10 times their cost; fabric sealant, paint treatments, and other add-ons are of no value; overpriced financing; and, delivery fees that are typically over $500 represent thousands of dollars of charges that car companies are happy to impose — yet these same companies are objecting to a minimal $9 charge to insure that NHTSA can carry out its research, regulatory and enforcement responsibilities. At the same time, all across the country, auto dealers are lobbying states to raise or eliminate the cap on document fees which range up to $900 in states without caps and as low as $55 in states with caps. Consumers are charged exorbitant costs for paperwork which is now completed in minutes and submitted electronically. With the average new car price nearing $30,000, a $3 to $9 fee is an insignificant sum that consumers would willingly pay to ensure that their new vehicle doesn't have a deadly safety defect like sudden acceleration. Clearly, what the manufacturers are objecting to is insuring a fully funded regulatory agency that may hold them accountable to the law.

Section 501: Preemption of State Law

While the manufacturers want is for NHTSA to be able to declare federal preemption rights to encourage state court judges to dismiss legitimate liability cases. Ironically, it is the auto dealers who are the greatest beneficiary of a myriad of state laws and legal rights. Dealers rely on the wide variation in state laws when it comes to their responsibilities in selling motor vehicles, but the auto industry seeks to use federal preemption to bar consumers from recovering for safety defects when they are injured. Allowing federal executive agencies to determine the reach and extent of their own regulations in the arena of federal preemption of state judicial decisions is unwise and a usurpation of the roles of the judiciary and Congress.

In Senate Bill 3302 the car manufacturers want to eliminate:

Section 201: Civil Penalties:

The current, arbitrary $16 million cap is significantly increased in both the House and Senate bills so the penalties will serve as a deterrent for multi-billion dollar manufacturers. Even the smallest of auto makers generates billions in revenues each year. Currently, they have made a mockery of NHTSA's paltry civil penalties, and treat them simply as a cost of doing business. In fact, a Toyota employee even bragged about avoiding a $100 million in sudden acceleration recall costs when the scope of a 2007 sudden acceleration recall was limited. This sum dwarfs the current maximum civil penalty that NHTSA could impose and thus serves as no threat or deterrent to illegal corporate activity.

Increasing the cap does not affect NHTSA's responsibility to award the penalties in a reasonable fashion. The maximum penalty needs to be sufficiently high to provide a reasonable deterrent for the biggest, wealthiest corporations. But the agency has no interest or intent to use civil penalties to put companies out of business and has never done so. NHTSA imposes lesser penalties against small companies for lesser violations, while reserving the million dollar penalties for the billion dollar auto companies that have committed major violations. The claim that the agency might impose the maximum penalty on small suppliers is ludicrous. The use of civil penalties is a common statutory means to promote compliance by regulated parties, but the penalties must be commensurate to the task and sufficient to deter violations of law. Significantly increasing the current statutory cap is essential to help ensure future compliance with the law.

Section 307: Corporate Responsibility

While no doubt company safety officials will be involved in certifying submissions to NHTSA in safety and defect investigations, it is imperative that these be signed by a corporate officer, not just senior company employees. Time and again, the car companies have blamed non-compliance with required rules and regulations on 'errant' employees. This process lacks personal, individual responsibility by the most senior corporate officials for corporate actions, especially when NHTSA must rely on the information provided by companies to accurately assess safety threats. This behavior makes it mandatory that corporate officers, with formal legal and fiduciary obligations for the operation of the company take responsibility for these submissions. Not only will it enable the government to get a more accurate and complete response to safety inquiries, but it will also allow NHTSA to truly hold car companies and their senior officers accountable for the accuracy and completeness of their submissions, and even protect the auto companies from mistakes made by these 'errant' employees.

Section 310: Used Passenger Motor Vehicle Consumer Protection

The car companies and the U.S. Chamber of Commerce claim that informing consumers about safety recalls on used cars would decrease the ability of consumers to afford used cars. In reality, what they are really saying is that used car consumers are second-class citizens who should be kept in the dark about the safety of the used cars they buy and risk driving a defective vehicle. Company opposition to this reasonable, common sense requirement is more about preserving profits than protecting consumers. Not only is informing customers about potential safety problems appropriate business and ethical behavior, it is very easy for dealers to go online with a vehicle identification number (VIN) and determine the recall status of the cars that they are selling. In fact, not doing so, given their ready access to this information, demonstrates a blatant disregard for the safety and well-being of their customers. For the car companies and the U.S. Chamber of Commerce to claim that this would decrease the ability of consumers to afford their used cars, is equivalent to saying that keeping consumers in the dark about safety recalls allows them to charge more for potentially defective vehicles. Furthermore, given that recall completion rates currently hover only around 75%, it is absurd to claim that requiring dealers to check for outstanding recalls would not provide "any identified commensurate safety benefit." This assertion would be laughable if it did not represent a tragic disregard for their customers. The industry and business leaders who support this notion are, in essence, calling for a return to *caveat emptor* for purchasers of used vehicles.

The criticisms and concerns expressed by auto interests and the Chamber of Commerce are unfounded, unreasonable and unworthy of your consideration.

Sincerely,

Joan Claybrook President Emeritus Public Citizen	Clarence Ditlow Executive Director Center for Auto Safety	Jack Gillis Director of Public Affairs Consumer Federation of America
Ami Gadhia Policy Counsel Consumers Union	Jacqueline S. Gillan Vice President Advocates for Highway and Auto Safety	