



**STATEMENT OF JOHN M. SIMPSON  
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ON  
“SELF-DRIVING VEHICLE LEGISLATION”  
SUBMITTED TO THE  
HOUSE ENERGY AND COMMERCE SUBCOMMITTEE ON  
DIGITAL COMMERCE AND CONSUMER  
PROTECTION  
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## **Introduction**

Consumer Watchdog is a national nonpartisan, nonprofit public interest group dedicated to providing an effective voice for taxpayers and consumers in an era when special interests dominate public discourse, government and politics. We deploy an in-house team of public interest lawyers, policy experts, strategists, and grassroots activists to expose, confront, and change corporate and political injustice every day, saving Americans billions of dollars and improving countless lives. We have played a key role in the development California's autonomous vehicle regulations, working to bring transparency to the state testing program's reporting requirements.

## **Do Not Create Safety Void**

Self-driving autonomous vehicles -- robot cars -- operating without mandatory safety, security, privacy and ethical standards will pose unprecedented risks to the American public. No one disputes that the evolution of motor vehicle technology has the potential to prevent deaths, injuries and property damage. New technologies such as automatic emergency braking, lane keeping, collision warning, and assisted parking are already doing so, and indeed should be made standard equipment in all vehicles. The point is that the gradual automation of driving will introduce a new set of risks. These risks will necessarily be far broader than those posed by vehicles today -- suggesting that the ramifications for liability and insurance as well as safety regulation will be significant. A fully autonomous robot-based transportation system will likely reduce the number of crashes caused by human error, but that does not tell us anything about the overall impact of a fully autonomous system. Lost in the hyperbole over robot cars is a realistic assessment of the likely costs to both consumers and taxpayers particularly over the coming decades, when robot cars and human drivers will share a "hybrid highway."

Rather than create the necessary regulations that would protect safety on our highways, the draft discussion legislation before this Subcommittee, would leave a regulatory void without meaningful safety protections. Federal Motor Vehicle Safety Standards (FMVSS) covering Highly Autonomous Vehicles (HAVs) are necessary and must be based on performance. Performance standards have the added benefit of spurring innovation as manufacturers strive to develop the most efficient way to meet the standard. The proposed legislation circulated by the

Subcommittee does nothing to require or promote the development of such safety standards. Rather, the first proposed bill would pre-empt the states from enacting any safety standards applying to HAVs.

So far, the National Highway Traffic Safety Administration (NHTSA) has abdicated its responsibility to enact FMVSS covering HAVs. To fill the void some states are stepping up to protect their citizens and moving to promulgate necessary safety regulations. Pre-empting the states' ability to fill the void left by federal inaction leaves us at the mercy of manufacturers as they use our public highways as their private laboratories however they wish with no safety protections at all.

When the federal government finally assumes its responsibility to enact FMVSS covering HAVs state safety standards would under current law be pre-empted. The proposed pre-emption in the draft bill is not about standardizing safety rules across the nation. Rather, it's about leaving no rules to cover developers and manufacturers as they rush robot cars on to our highways. When the federal government finally meets its obligation and acts, state standards will be gone. There will be no "patch-work" of competing and possibly contradictory regulations that some warn about.

NHTSA must not enact design standards that would in effect leave the impression that the agency deems a particular technology "reasonably safe." Our legal system has traditionally helped ensure that manufacturers are liable for any defects for which they are responsible. What NHTSA must do – and any legislation must require – is that NHTSA enact performance-based safety standards that cover autonomous vehicle technologies.

### **States Must Retain Jurisdiction on Insurance and Liability**

While Consumer Watchdog strongly objects to the proposed legislation that would prohibit states from filling the void caused by federal inaction and enacting necessary safety standards, there is also language that ensures that the auto regulatory responsibilities that have been left to the states remain there. These include jurisdiction over licensing; enacting and enforcing traffic laws and

regulations; conducting safety inspections where applicable; and regulating vehicle insurance and liability.

There is no way that there can be a separate federal system for liability and insurance for self-driving vehicles while retaining the current state-based system of tort and insurance laws for traditional vehicles. That would create massive confusion. So, the federalization of liability and insurance laws would require complete pre-emption of the state based systems in their entirety. That would mean, for instance, that California, would lose its consumer protecting laws, especially Proposition 103, the application of which to auto insurance would be repealed.

As both Sub-Committee's report and NHTSA's guidance on automated vehicles have noted, the states have a well-established successful history of regulating licensing, traffic, insurance and liability. This approach must continue, but Consumer Watchdog believes legislation is unnecessary in the face of what is already clearly established legal procedure.

Other proposed bills would increase the number of vehicles a manufacturer could sell that are exempted from FMVSS and the time such an exemption would last. Current law allows exemptions for testing purposes so long as the vehicles are not sold. This is sufficient to test robot cars and in no case should vehicles be allowed on the highway that do not meet FMVSS covering crash protection standards. Before HAVs can be deployed to the public, it is incumbent on NHTSA to enact FVMSS that specifically apply to autonomous technologies.

### **More Resources Necessary**

Other proposed bills would create what are little more than cosmetic advisory committees dealing with HAVs and their potential benefits for the disabled, improving mobility and cyber-security concerns. Their creation must not be allowed to substitute for the action most necessary to ensure safety on our nation's highways: adequate resources for NHTSA.

One misnamed proposed bill – the “Sharing Automated Vehicle Records with Everyone for Safety Act” or the “SHARES Act” leave the impression that it promotes sharing test data with the public. Instead the opposite is true; the bill is all about keeping test data from the public.

When companies use our public roads as their private laboratories they have an obligation to be completely transparent about their activities. California self-driving vehicle testing regulations require both crash reports a “disengagement reports,” which so when the self-driving technology failed, to be filed with the state Department of Motor Vehicles. The reports are published on the DMV’s website.

With the increasing development of lifesaving autonomous technologies and the ultimate deployment of HAVs the demands on NHTSA will only increase. Today 95 percent of transportation fatalities and 99 percent of transportation injuries involve vehicles on our roads. Unbelievably, NHTSA receives only 1 percent of the federal Department of Transportation’s budget. In the face of the greater challenges HAVs pose, NHTSA must have more staff with more technical expertise and funding.

## **Principles for Autonomous Vehicle Policy**

The next few years will feature complex interactions between people, computers, cars and public streets and freeways, during which today’s liability protections and rules restraining insurance rates and unfair practices by insurance companies will become especially important. To deal with the challenge posed by autonomous vehicle technology, Consumer Watchdog believes six principles must be adopted. They are:

1. **Protect the civil justice system.** The state-based civil justice system – open courts, impartial judges and citizen juries – is fully equipped to handle the determination of legal responsibility as our transportation system evolves over the coming decades. Disputes over who is at fault in a crash involving a self-driving car or truck will require the full power of civil justice system, with its procedural safeguards of an impartial judge, full public transparency, and trial by citizen juries, to investigate and publicly expose the cause of crashes, compensate the victims for deaths, injuries and property damage, punish the wrongdoer, and force manufacturers to make changes in their products to prevent future harm. When their autonomous technologies fail, hardware and software manufacturers must be held strictly liable. Lawmakers should reject legislation to limit or restrict state consumer protection laws. Manufacturers must not be permitted to evade these

consumer protections by inserting arbitration clauses, “hold harmless” provisions or other waivers in their contracts.

**2. Enact stronger state consumer protections against insurance company abuses.** According to a 2013 report by the Consumer Federation of America, “California stands out from all other states in having the best insurance regulatory system for protecting consumers.” Enacted by California voters in 1988, California’s insurance reform law provides precisely the stronger protections consumers will require in the era of robot vehicles. The reforms, known as Proposition 103, have protected motorists (along with homeowners, renters, businesses and medical providers) against unjust insurance rates (including product liability insurance rates) and anti-consumer and discriminatory practices. The law’s emphasis on rewarding drivers with lower insurance premiums based on their safety record, their annual mileage, their driving experience, and other rating factors within their control that are “substantially related to the risk of loss,” will be critical in the new automotive era. Proposition 103’s mandate for public disclosure and public participation in regulatory matters are essential components of a system that will be trusted by consumers.

**3. Enact auto safety standards.** Private companies cannot be trusted to develop and deploy robot cars and trucks without rules. The federal auto safety agency or other relevant federal agencies, or in their absence, state auto safety agencies, must develop standards for the testing and deployment of the multiple technologies required by robot vehicles. These standards must address safety, security, privacy and the software that determines the robot’s actions in the event of an impending collision and as it makes life and death decisions. They must be enforceable by consumers in courts of law.

**4. Stronger laws are needed to protect consumers’ privacy.** The laws have not kept pace with the evolution of technology and the collection and monetization of consumers’ personal data. Hardware and software manufacturers and insurance companies must be barred from utilizing tracking, sensor or communications data, or transferring it to third parties for commercial gain, absent separate written consent (which should not be required as a condition of accessing the

services of the vehicle/manufacturer, and which should be revocable by the consumer at any time).

**5. Bar federal interference in state consumer protection laws.** Neither Congress nor federal agencies should be permitted to preempt or override stronger state based civil justice, insurance reform or auto safety laws.

**6. Respect democratic and human values.** The sponsors of self-driving vehicles have promoted the myth that machines are infallible in order to justify the wholesale departure from a panoply of norms that form founding principles for the nation, beginning with the rule of law; individual and corporate responsibility; long held legal principles that distinguish between human beings and property; and the transparency of public officials and institutions that is a hallmark of democracy. The strategy of substituting robot values for human values has reached its apotheosis in the determination by robot car company executives to program computers to make life and death decisions, and to keep that decision-making process secret. Lawmakers will need to impose the rule of law and other attributes of American democracy upon the executives of the hardware and software companies that manufacture self-driving cars.

## **Conclusion**

Congress must not succumb to the siren song of the autonomous car developers who are over promising what autonomous vehicle technology can do today. We call on you to require the development of enforceable federal safety performance standards. Responsible regulation goes hand-in-hand with innovation. Voluntary “standards” in the auto industry have repeatedly been proven to be weak and insufficient. Safety must come before the automakers’ bottom lines. Consumer Watchdog calls on you to require NHTSA to enact the necessary regulations to protect the safety of our highways and give the agency the necessary resources to do so.