Statement of Forrest McConnell
Former Chairman, National Automobile Dealers Association
before the
House Digital Commerce and Consumer Protection Subcommittee
and the
House Environment Subcommittee
regarding a hearing entitled
"Update on the Corporate Average Fuel Economy Program (CAFE) and Greenhouse Gas Emissions Standards for Motor Vehicles"

December 12, 2017

Chairman Latta, Chairman Shimkus, Ranking Member Schakowsky, Ranking Member Tonko, members of this joint subcommittee, thank you for inviting me to testify on the topic of fuel economy. My name is Forrest McConnell, and I am a 3rd generation Honda and Acura dealer from Montgomery, Alabama. I am also a former chairman of the National Automobile Dealers Association (NADA), which represents over 16,000 dealers who employ 1.1 million people.

I've been in the car business for over 40 years selling fuel efficient Hondas, through good times and bad, but one thing never changes: people choose the new vehicles they buy primarily on two factors: (1) does it fit their needs; and (2) price – can they afford it? These important considerations make how fuel economy is regulated relevant to every auto dealer in America and their customers.

Mr. Chairman, some Members may be surprised to learn that there are not one, but three fuel economy programs that automakers must comply with. These different fuel economy programs are administered by three different agencies – the National

Highway Traffic Safety Administration (NHTSA), the Environmental Protection Agency (EPA), and the California Air Resources Board (CARB) – under three different sets of rules, issued pursuant to three different laws, potentially resulting in three different standards, all of which must be separately complied with. These duplicative and sometimes contrary regulations were labelled by the Obama Administration as "One National Program," but in reality, they are three separate programs.

Before the Obama Administration's "One National Program" began in 2009, fuel economy was regulated by NHTSA under the Corporate Average Fuel Economy program or CAFE. When Congress established CAFE in 1975,[1] it gave NHTSA sole authority for setting national fuel economy standards.[2] To avoid a patchwork of state standards, Congress also expressly preempted states from regulating fuel economy, or even issuing regulations "related to" fuel economy.[3] Congress modernized the CAFE program in 2007 on a bipartisan basis, leaving this regulatory structure intact.[4]

Two years later, due to actions by the judicial[5] and executive branches, the Obama Administration's "One National Program" was established.[6] Despite statutory language to the contrary, EPA was put in *de facto* charge of setting fuel economy policy.

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[1] Pub. L. No. 94-163, 89 Stat. 901
[2] See Pub. L. No. 94-163, 89 Stat. 903. NHTSA sets fuel economy standards through a grant of authority by the Secretary of Transportation.
[3] 49 U.S.C. § 32919(a)
[4] Pub. L. No. 110-140, 121 Stat. 1499
[5] See *Mass. v. EPA*, 549 U.S. 497 (2007). Nothing in this Supreme Court decision required EPA to regulate auto tailpipe greenhouse gas (GHGs) emissions by establishing a fuel economy regime that is independent of and in addition to the CAFE program.
[6] 74 Fed. Reg. 24007 (May 22, 2009)

Moreover, CARB was allowed for the first time to set its own fuel economy standard,[7] which was adopted in 12 states by operation of law. Because of these actions, the CAFE program Congress designed has been reduced to a near nullity.

This joint subcommittee should reexamine whether returning to fuel economy standards set by NHTSA, under rules designed by Congress, is preferable to the current structure. There are benefits to having regulatory clarity, and to the CAFE program. For example:

- The CAFE program was specifically written to regulate fuel economy. When setting fuel economy standards, NHTSA must balance job loss, safety, consumer choice and market demands. The law Congress wrote demands that NHTSA set fuel economy standards at the maximum feasible level and balance these important considerations.
- In contrast, the Clean Air Act, which EPA regulates under, was not designed to regulate fuel economy.[8] Additionally, EPA is not required to balance the

[7] 78 Fed. Reg. 2112 (Jan. 9, 2013)

[8] The main vehicle GHG is carbon dioxide, the emission of which can only be significantly reduced by raising a vehicle's fuel economy. Indeed, according to CARB, "…although NHTSA's CAFE standards do not constitute motor vehicle emission standards, they are closely related to EPA's corresponding greenhouse gas emission standards…." See "*Comments of the California Air Resources Board Responding to The National Highway Traffic Safety Administration's Notice of Intent to Prepare an Environmental Impact Statement for Model Year 2022-2025 Corporate Average Fuel Economy Standards*," pg. 8. (Sept. 8, 2017) (Docket No. NHTSA-2017-0069). This relationship is so close that all fuel economy testing since the early 1970s has involved capturing and measuring the amount of tailpipe CO2 emitted by a vehicle during a standard test procedure. To be sure, EPA can and does regulate other motor vehicle GHGs that "generally do not relate to fuel economy." See 77 Fed. Reg. 62674 (Oct. 15, 2012). Regulating those pollutants, however, does not justify establishing a fuel economy regime that is independent of and in addition to the CAFE program.

important factors Congress mandated NHTSA to consider when setting a standard, such as consumer choice or job loss.

- California's regulation considers economic factors -- but only in California.[9] So if California's regulations causes job loss in other states, California regulators don't consider those impacts. Moreover, CARB is officially helping set national policy, yet is not accountable to Congress. Finally, every state, including California, is expressly preempted from regulating fuel economy, yet this prohibition has been ignored since 2009.

All this duplicative regulation costs money – be it additional compliance costs for manufacturers, or the building of "compliance vehicles" solely to satisfy EPA and California regulators. Ultimately, multiple fuel economy regimes impact nearly every new vehicle buyer, because automakers are forced to charge more for the vehicles consumers want to subsidize the building of vehicles regulators want.

These unnecessary regulatory costs help make the Obama One National Program the most expensive set of rules ever imposed on the auto industry, at a total cost of $209 billion.[10] According to these rules, this program will raise the average price of a

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[9] Cal. Health & Safety Code § 43018.5

[10] 74 Fed. Reg. 14206 (Mar. 30, 2009); 75 Fed. Reg. 25348 (May 7, 2010); 77 Fed. Reg. 62657 (Oct. 15, 2012).

vehicle by nearly $3,000,[11] and we believe will price over six million people entirely out of the new car market.[12]

Let me be clear: Manufacturers and dealers are committed to bringing new, innovative and effective technologies to market in order to provide our customers with the vehicles and features they truly want while moving fuel and emissions efficiencies forward. But these new technologies are going to cost real money to real people, and our customers are already telling us that car prices are increasingly out of range.

America would benefit from returning to the one national fuel economy program established by Congress. This is not a new idea. In 2011, Congress passed a bipartisan bill, sponsored by Congressman Upton, that would have reestablished CAFE as the sole fuel economy program.[13]

Mr. Chairman, let's bring accountability back by returning to one national fuel economy program with rules set by Congress. Thank you.

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[11] *Departments of Transportation, and Housing and Urban Development, and Related Agencies Appropriations for 2013,* 112th Cong., 2nd Session, pg. 35, (March 8, 2012) (question by Rep. John Carter to Secretary Ray LaHood). See also 74 Fed. Reg. 14413 (Mar. 30, 2009); 75 Fed. Reg. 25635 (May 7, 2010); 77 Fed. Reg. 62852 (Oct. 15, 2012).

[12] David Wagner et al, *The Effect of Proposed MY 2017-2025 Corporate Average Fuel Economy (CAFE) Standards on the New Vehicle Market Population*, NADA, pg. 5, (Feb. 13, 2012).

[13] H.R. 910 (112th Congress)