

**NHTSA OVERSIGHT: AN EXAMINATION OF THE  
HIGHWAY SAFETY PROVISIONS OF SAFETEA-LU**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION,  
PRODUCT SAFETY, AND INSURANCE

OF THE

COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

SEPTEMBER 28, 2010

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ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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**TUESDAY, SEPTEMBER 28, 2010**

U.S. SENATE,  
SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT  
SAFETY, AND INSURANCE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 10:29 a.m. in room SR-253, Russell Senate Office Building, Hon. Mark Pryor, Chairman of the Subcommittee, presiding.

**OPENING STATEMENT OF HON. MARK PRYOR,  
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR. I'll go ahead and call the Subcommittee to order.

I want to thank everyone for coming to the Senate Committee on Commerce, Science, and Transportation's Subcommittee on Consumer Protection, Public Safety—excuse me, Product Safety, and Insurance Subcommittee.

I want to thank all of my colleagues for being here. We have a few more on the way. And I'm going to give a brief opening statement here, and then I'll let others give opening statements if they prefer. And the witnesses will have 5 minutes to give their opening remarks.

We're going to leave the record—we're going to put all of your opening statements in the record, so don't feel like you have to cover everything, because we'll put in the record. And also, we're going to leave the record open for a few days afterwards for follow-up questions.

Let me go ahead and get underway. The other little house-keeping issue is, in about an hour we're going to have a couple of rollcall votes on the floor, so we may have to recess this subcommittee briefly, and run over and vote, and come back. But, we'll work through that at the appropriate time.

NHTSA has two core missions: vehicle safety and highway safety. Today's hearing will focus mostly on highway safety. The highway safety mission consists of safety and research programs designed to decrease vehicle deaths and injuries by changing driver behavior regarding seatbelt use, drunk driving, speeding, motorcycle safety, child restraints, and, most recently, distracted driving, as well as other areas.

NHTSA addresses driver behavior with safety grants to States that enact certain laws or carry out enforcement activities such as police patrols. NHTSA also conducts national advertising programs related to seatbelts and drunk driving as part of its coordination with the States. In addition, NHTSA conducts research into driver behavior safety concerns such as impaired driving, distracted driving, teen driving, and the emerging problem of older drivers now that the baby-boomers have begun to retire.

The vast majority of these programs and grants are funded through the Highway Trust Fund. While we will not get into a debate over the Highway Trust Fund in this hearing, it is important that we recognize its current shortcomings as we consider plans to adequately fund important highway safety initiatives.

In 2005, Congress enacted SAFETEA-LU, a reauthorization of the Federal Highway programs, including NHTSA's highway safety programs. This authorization expired in September 2009, and has been extended now by the Congress five times. The most recent extension is scheduled to expire on December 31 of this year. New legislation is being—is needed to reauthorize these programs and other NHTSA functions, and it's clear that funding levels are currently inadequate. NHTSA is in need of additional funding and resources to not only implement existing programs, but also to implement new programs related to drunk driving, distracted driving, and others that may need to be included in the upcoming reauthorization.

This hearing will provide the Subcommittee with the opportunity to examine the Safety Grant programs as they exist under the current authorization, and to consider new strategies for funding programs to improve driver safety.

I look forward to receiving input from all of our witnesses today. And I look forward to working with each of them as this committee and subcommittee begin to develop the NHTSA reauthorization bill as part of the larger surface transportation reauthorization legislation in the coming weeks and months.

And I also want to thank all of my colleagues for their participation and their attention to these very important public safety matters.

Another issue that we will address today, in our third panel, is vicarious liability. And the subject is something that I know Senator Nelson and others have been interested in. We'll review a provision in the 2005 SAFETEA-LU bill, added by Congressman Graves of Missouri, that preempted State tort laws, as they relate to liability for vehicle rental companies. So, I look forward to hearing about the impact of that amendment and how it has impacted citizens and companies in the various states.

Now what I'd like to do at this point, I know that Senator Nelson has other committees he has to get to, so why don't I recognize Senator Nelson for his opening statement, and then we'll go to the witnesses.

Thank you.

**STATEMENT OF HON. BILL NELSON,  
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Thank you, Mr. Chairman.

I want to thank all the witnesses for participating today. And one particular witness, a personal friend of mine, Ira Leesfield, is a tireless advocate of justice. He is from Florida and he's a tireless advocate, both in the courtroom, as well as, outside of the courtroom. For example, he received the AJC's Judge Learned Hand Award for preferred excellent—excellence, in honor of the memory of Judge Learned Hand and the principles that that judge stood for, and that was the rights of the individual and the importance of democratic values in an orderly society.

Now, Mr. Chairman and Ranking Member Senator Wicker, we have a unique situation in Florida, and you're going to touch on it in the third panel. We have about 40—minimum 40 million, and it's probably approaching 60 million, visitors a year to Florida. Of course, our tourism industry is one of our large industries. And a lot of those guests come from foreign countries. And when they get to Florida, they rent a car. In the wisdom of the State legislature, under Governor Jeb Bush, they lowered the tort limits, lowering it to \$500,000 for damage and \$100,000 for pain and suffering. That was Governor Bush and a Republican legislature.

But, along comes the Graves Amendment, and it wipes out States' rights. A State that has a unique situation, unlike Arkansas and unlike Mississippi, tens of millions of visitors, many of whom are foreign guests that rent a car, get in an accident, and leave the country, and the injured is left without compensation. That's why, in the wisdom of Governor Bush, in wanting to put limits on tort liability, they lowered it, but they lowered it to that 500/100 level.

But, what happens now, as we—and you've heard me say this before; Florida is not only a microcosm of the country, it's now a microcosm of the Western Hemisphere—with so many visitors coming in from Latin America, Europe—and, of course, what are the draws? The draws are our beaches. The draws are Miami, an international city. The draws are, obviously, the attractions in Orlando. Orlando and Miami are two of the largest international airports in the world. And when one of those foreign guests gets in an accident, and there is no financial liability of the guest, because they're gone, then the injured person is up-creek without a paddle.

I would ask you to consider as this third panel deliberates this—this is going to be opposed, of course, by the rental car companies, and I understand that. But, rental car companies, because of the number of customers that they have, make tens of billions of dollars in the State of Florida. And for trying to protect people, I would urge that you consider States' rights, in the State law-making body and its Governor, to know what should apply best to the unique circumstances of that State. That's not the present situation, with the Graves Amendment, and that thoughtful balance was completely overturned.

Now, let me just say, in closing, before I came here to the Senate, I was the elected Insurance Commissioner of Florida. And I stood on States' rights for States to have the ability to judge what were their best consumer law protections. We count on members of the legislature and our elected officials.

Now, on this committee, you've got former Governors, you've got former members of the legislature, you've got former law enforcement officers on this committee, all of whom have real-world experience in preserving the delicate balance of States' rights and Federal power. And I hope that this committee will draw on that experience in determining this.

And I believe that, given the unique circumstances that we find in our State, that this ought to be an exception to the Graves Amendment.

So, thank you, Mr. Chairman.

I'm going to go on to these committee meetings, and I will try to get back.

Senator PRYOR. Thank you.

Senator NELSON. If my voice holds out.

Senator PRYOR. I understand. Thank you very much.

Senator Wicker.

**STATEMENT OF HON. ROGER F. WICKER,  
U.S. SENATOR FROM MISSISSIPPI**

Senator WICKER. Senator Nelson's voice has held out very well so far.

Mr. Chairman, I have a very brief statement that I would like to give before we allow our witnesses to testify.

Of course we're holding a hearing today into the safety provisions of our last highway bill and the way it is administered through NHTSA. These are important programs that have a significant impact on highway safety in each of our States. The Highway Safety Grant programs have a budget of over \$600 million for Fiscal Year 2010, so it is very important to ensure that the funds are being used effectively and efficiently.

I want to thank Chairman Pryor, for taking this opportunity to do oversight.

Transportation Secretary LaHood recently announced that in 2009, highway deaths fell to 33,808, the lowest number since 1950. This decline follows an encouraging trend, as fatalities have decreased every year since 2005. Last year's decline occurred even though the estimated vehicle miles traveled for the year actually increased above the 2008 levels. Forty-one states, including my home State of Mississippi, saw a reduction in the total number of highway fatalities. The number of people injured in a crash also fell for the 10th straight year.

While these numbers are encouraging and show continuing improvement, there are still far too many deaths and injuries that occur on our roads. Statistics show that motor vehicle crashes remain the leading cause of death for those between the ages of 3 and 34.

The goal of everyone here today is to continue the decline in highway deaths each year, and the Federal grants provided to the States to implement safety plans play an important role.

Today, we will learn more about the grants and how they are used. We need to discover where they're working well and where they could be made more efficient. This should help us make the program more efficient for the States and for the drivers and passengers on our roads.



It is important to examine how the States report data and how NHTSA utilizes that data to administer the grants appropriately. It is also important to learn from NHTSA about their plans for the future; how the administration intends to continue seeing this decline in accidents.

There are many exciting developments occurring in vehicle safety technology. Each day, it seems we're moving more toward the futuristic cars previously only seen in movies, with vehicles able to sense trouble before it happens, and in some cases, to react for drivers to help keep them safe. It will be important to hear from our witnesses as to how these technologies are being utilized and what NHTSA's role should be in facilitating the next-generation vehicle safety measures.

We're fortunate to have expert witnesses here today who can tell us more about these programs. In our first panel, we will hear from NHTSA Administrator Strickland; in our second panel, from stakeholders in the vehicle highway safety community.

I, too, may not be able to make the third panel, but I appreciate the insight that my colleague from Florida has provided there.

I want to thank all of our witnesses for being with us today and sharing their knowledge and experience. They are important resources for us as we review the highway safety provisions of SAFETEA-LU, and I look forward to a productive hearing.

Thank you, Mr. Chairman.

Senator PRYOR. Thank you, Senator Wicker.

And we've been joined by Senator Udall, who I understand has to go preside in the Senate, here, in a just a minute.

So, go ahead—

Senator UDALL. That is—

Senator PRYOR.—make your statement please.

Senator UDALL.—correct, Senator Pryor.

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. And I thank you for holding this hearing today on highway safety programs.

Highway safety is critical; and, while great steps have been made since the enactment of SAFETEA, it's important for us to continue to evaluate the safety programs for effectiveness. It's also important that we continue to identify ways to improve highway safety in the future.

Combating drunk driving has been a focus of mine for nearly 20 years, and it will stay a focus until it's eliminated. While the existing programs to reduce drunk driving are helping move us forward, drunk driving remains the primary cause of fatal crashes. Additionally, despite their positive track record of reducing recidivism, only 11 States have enacted ignition interlock laws for convicted DUI offenders. That's why I've introduced the ROADS SAFE legislation that was incorporated into the Motor Vehicle Safety Act.

ROADS SAFE authorizes and increases funding for research being conducted by NHTSA and leading automakers as they develop vehicle safety technologies to prevent drunk-driving crashes. Some describe this effort as a Manhattan Project to end drunk driving. The technologies developed in this program could one day

be used to prevent anyone from driving any vehicle if their blood alcohol content is above .08.

But, drunk driving isn't our only highway safety challenge. Our highways can be made safer for all through simple changes in behavior. What is critical to understand is how we can help encourage these daily changes across the Nation every day so that lives will be saved.

And it's good to see the Honorable David Strickland here, Senator Pryor. As Administrator, I know that he, with his experience here at the Commerce Committee, is going to put a priority on drunk driving and highway safety. And sorry I'm going to miss his testimony, since I'm headed off to preside.

But, I'd also ask to put my full statement in the record.

Thank you.

Senator PRYOR. Without objection. Thank you for being here.

[The prepared statement of Senator Udall follows:]

PREPARED STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM NEW MEXICO

Senator Pryor, thank you holding this hearing on highway safety programs.

Highway safety is critical and while great steps have been made since the enactment of SAFETEA it is important for us to continue to evaluate the safety programs for effectiveness. It is also important that we continue to identify ways to further improve highway safety in the future.

Combating drunk driving has been a focus of mine for nearly twenty years and it will stay a focus until it is eliminated. While the existing programs to reduce drunk driving are helping move us forward, drunk driving remains the primary cause of fatal crashes. Additionally despite their positive track record of reducing recidivism, only 11 states have enacted ignition interlock laws for convicted DUI offenders. That is why I have introduced the ROADS SAFE legislation that was incorporated into the Motor Vehicle Safety Act.

ROADS SAFE authorizes and increases funding for research being conducted by NHTSA and leading automakers as they develop vehicle safety technologies to prevent drunk driving crashes. Some describe this effort as a "Manhattan Project" to end drunk driving. The technologies developed in this program could 1 day be used to prevent anyone from driving any vehicle if their blood alcohol content is above 0.08.

But drunk driving isn't our only highway safety challenge. Our highways can be made safer for all through simple changes in behavior. What is critical to understand is how we can help encourage these daily changes across the Nation everyday so that lives will be saved. NHTSA is leading the effort in guiding those changes and I look forward to hearing from the witnesses today on how NHTSA will continue to address changes needed to improve safety on our roads.

Senator PRYOR. Now, this brings us to our first panel and our first witness. And our—this witness, here, is no stranger to this committee.

[Laughter.]

Senator PRYOR. He lived in this committee, was this committee, for years and years, and we appreciate his service here, and we certainly appreciate his service over at NHTSA. So, I'd like to introduce the Honorable David Strickland, Administrator, National Highway Traffic Safety Administration of the U.S. Department of Transportation.

Go ahead.

**STATEMENT OF HON. DAVID L. STRICKLAND,  
ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY  
ADMINISTRATION, DEPARTMENT OF TRANSPORTATION**

Mr. STRICKLAND. Thank you so much, Chairman Pryor, Ranking Member Wicker.

This is my first time back before my old subcommittee. It's an honor and a privilege to be before you as the Administrator of NHTSA. And I look forward to working with this committee and the Congress in the going-forward days on preparing for reauthorization.

NHTSA recently released data showing that in 2009 the Nation continued to make dramatic progress in motor vehicle safety. Fatalities fell almost 10 percent between 2008 and 2009, and injuries fell by more than 5 percent. There are many reasons for this improvement, but Congressional leadership was key, for I believe that the grants, research, and other programs authorized by SAFETEA-LU, played a key role in the significant reduction in highway fatalities. Overall, both the number and the rate of fatalities on our roadways have fallen by more than 20 percent between 2004 and 2009. Some of the key indicators include seatbelt use being up by 6 percent, and child passenger restraint use for children 8-years-old and younger is up by 6 percent.

There is one indicator that is moving in the wrong direction: motorcycle fatalities. Between 2004 and 2009, the number of motorcycle riders killed increased by 11 percent, to 4,462 riders. However, we did see the first decrease in motorcycle fatalities in more than a decade between 2008 and 2009. We need to build on last year's progress. The most important step we could take is to assure that all riders wear Department of Transportation-compliant helmets, which are 37 percent effective in reducing fatalities.

We estimate that helmets prevented over 1,800 fatalities in 2008, and at least 800 additional fatalities could have been avoided if those riders wore helmets. NHTSA will actively work with the Congress to promote helmet use.

The Nation has enjoyed 17 consecutive quarters of reduction in highway crash fatalities, an unprecedented occurrence. Aside from the admittedly important exception of motorcyclists, all the data is moving in the correct direction.

It is important to acknowledge that this progress may be partly attributable to the economic downturn that this country is currently suffering. While overall miles driven have increased, we believe that discretionary travel may have fallen. Data suggests that these trips are higher risk than daily commuting trips. So, as the economy improves, crashes may increase somewhat. That makes it all the more important that we continue to promote programs that work, and continue to modify and revise our approach to further enhance safety.

Therefore, I'd like to highlight a couple of the programs that work very well in SAFETEA-LU.

The Section 406 Safety Belt Incentive Program provided a sizable incentive for States to adopt primary belt laws, and 14 states either adopted or upgraded their primary belt laws. Another 7 states qualify for 406 funds by achieving 2 consecutive years of observed belt use of 85 percent.

In addition, 18 states enacted new booster-seat laws, up from the 5 states and the District of Columbia that had such laws in 2006.

The Section 410 Impaired Driving Countermeasure Program made approximately \$650 million available in grants to the states between 2006 and 2010. From 2004 and 2009, alcohol-related fatalities on our roadways declined by 17 percent.

This Congress also provided \$29 million each year to fund high-visibility enforcement campaigns to support on-the-ground enforcement efforts to reduce impaired driving and increase seatbelt use. These funds are used to place paid advertising to educate the public, which includes our campaigns “Over the Limit, Under Arrest” and, for seatbelts, “Click It or Ticket.”

In addition to building on the successes we have seen in SAFETEA-LU, we at NHTSA are looking forward to continuing to work with this committee and the Congress on addressing evolving risks that we have observed in the traffic safety arena, as well as improving countermeasures for our more mature risks.

We have ongoing concerns about pedestrian safety and distraction. And we have initiated pilot programs in each of these areas in the hope to use the results to guide policy recommendations for the next reauthorization.

We also feel very strongly that encouraging and expanding the use of interlocks for those convicted of drunk driving would make significant strides in protecting the driving public from the ravages of this criminal act.

Under the leadership of Secretary LaHood, the Department looks forward to working with this committee to address highway safety challenges of today and in the future.

Thank you so much for this opportunity to appear before you today, and I look forward to answering your questions.

[The prepared statement of Mr. Strickland follows:]

PREPARED STATEMENT OF HON. DAVID L. STRICKLAND, ADMINISTRATOR,  
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Mr. Chairman, members of the Committee, it is a great pleasure to be back in familiar surroundings to talk with you today about SAFETEA-LU. Just as previous authorizations have structured NHTSA’s safety programs in the past—by establishing grant programs, funding research areas, and highlighting key issues—the next authorization will shape Federal and States safety programs for years to come. Therefore, I am very pleased to be invited to share my thoughts on SAFETEA-LU and its results.

Secretary LaHood recently released data showing that in 2009, the Nation continued to make dramatic progress in motor vehicle safety. Fatalities fell almost 10 percent between 2008 and 2009, and injuries declined by more than 5 percent. Fatalities fell in 41 States, the District of Columbia, and Puerto Rico. Many factors help account for this broad-based, nationwide improvement. Secretary LaHood has been focused on safety since his first day in office, and his example and persistence have inspired me and all of NHTSA to redouble our efforts to fight unsafe driving behaviors. Our State and local partners, who are in the field every day, enforcing traffic laws, training new drivers, developing local outreach campaigns, and otherwise promoting safety, are obviously crucial in the progress we have seen. But part of the progress is attributable to Congress, for I believe that the grants, research, and other programs authorized by SAFETEA-LU played an important role in the significant reduction in highway fatalities.

As the chart (See last page) shows, almost all the safety indicators we monitor indicate that safety has improved since the passage of SAFETEA-LU. Overall, both the number and the rate of traffic fatalities have fallen by about 21 percent between 2004 and 2009. Some of the other rows in the chart suggest why the number may

be falling: seat belt use is up by 5 percent, and child passenger restraint use among occupants 8 years old or younger is up by 6 percent.

However, you will notice that there is one indicator that is moving in the wrong direction, motorcycle fatalities. Between 2004 and 2009, the number of motorcycle riders killed increased from just over 4,200 to almost 4,462, an 11 percent increase. The number of motorcycle fatalities did fall between 2008 and 2009, the first time we have seen a decrease in more than a decade. We need to work to build on last year's progress. The most important step we could take would be to assure that all riders wear a DOT-compliant helmet, which are 37 percent effective in reducing fatalities. We estimate that helmets prevented over 1,800 fatalities in 2008, and that more than 800 additional fatalities could have been avoided if all riders wore helmets. NHTSA will actively work with Congress to promote helmet use.

This chart demonstrates that overall, the programs Congress created in SAFETEA-LU, and the tools that were provided to NHTSA, had the intended effect. The Nation has enjoyed sixteen (16) consecutive quarters of reduction in highway crash fatalities, an unprecedented occurrence. Aside from the admittedly important exception of motorcyclists, the data are moving in the correct direction: belt use is up, alcohol impaired fatalities are down, and overall fatalities and injuries are falling.

It is important to acknowledge that this progress may be partly attributable to the economic downturn the country continues to suffer through. While overall traffic has increased, we believe discretionary travel may have fallen. Data suggests these trips are higher risk than daily commuting trips. So as the economy improves, crashes may increase somewhat. That makes it all the more important that we continue to promote programs that work, and continue to modify and revise our approach to further enhance safety. Therefore, I would like to spend a minute discussing why that is, what we think worked in SAFETEA-LU.

First, SAFETEA-LU established the Section 406 Safety Belt Incentive program. This program provided a sizable incentive for States to adopt primary belt laws, and fourteen (14) States have either adopted new primary belt laws (PBLs), or upgraded existing laws because of this incentive. Another seven (7) States qualified for Section 406 grants by achieving two consecutive years of eighty-five percent (85 percent) observed safety belt usage. Enactment of a primary safety belt use law is one of the most important safety countermeasures available. States enacting primary belt laws typically see about a 10 percent increase in belt use, and belts have been shown to be about 50 percent effective in reducing fatalities, still the single most important piece of safety equipment in a vehicle. The Section 406 incentive program clearly had a positive effect in increasing safety belt usage across the Nation and contributing to the reduction in highway fatalities through the authorization period.

In addition, 18 states enacted new booster seat laws, up from the 5 States and DC that had such laws in 2006. These laws are crucial in protecting our youngest and most vulnerable citizens.

The Section 410 Impaired Driving Countermeasure Program made approximately \$650 million in grants available to the States from 2006–2010. During the same period, alcohol-related fatalities on the Nation's highways declined by seventeen percent (17%) from 13,099 to 10,839. This reduction reflects the hard work of the agency, States and communities, law enforcement agencies across the nation, and the non-governmental organizations that work so hard to prevent impaired driving crashes.

Congress also provided in SAFETEA-LU, \$29 million each year to fund high visibility enforcement campaigns to support law enforcement efforts on-the-ground to reduce impaired driving and increase safety belt use. These funds are used to place paid advertising to educate the public about the "*Over the Limit. Under Arrest.*," impaired driving national crackdown, and the *Click It or Ticket*, national safety belt usage mobilization. High visibility enforcement is a very successful model for achieving highway safety behavior modification and our national enforcement campaigns, particularly Click It or Ticket, have become a part of the national lexicon. We are piloting this approach for dealing with distracted driving in Hartford and Syracuse, and the early results look very promising.

SAFETEA-LU also had some special emphasis areas including annual funding for older driver safety and for law enforcement training on police pursuits. The older driver program has resulted in the creation of a variety of programs aimed at older drivers, particularly related to improving the scientific basis of driver licensing decisions through the development and promotion of driver fitness medical guidelines. During the authorization period, fatalities involving drivers age 65 and older dropped by 16 percent even while the population of older drivers continued to increase. While older individuals exhibit safer behavior—in fatal crashes, they are less likely to be alcohol impaired and more likely to be buckled—too many older citizens

continue to die in fatal crashes. NHTSA has also worked with law enforcement organizations to develop vehicular pursuit training, which helps promote the safety of public, the violator, and the officer. NHTSA and the International Association of Directors of Law Enforcement Standards and Training (IADLEST) have partnered to develop and provide a comprehensive pursuit policy program. Over 400 instructors have been trained, and workshops are in progress which, among other components, encourage law enforcement agencies to analyze current pursuit policies and training requirements.

Apart from safety countermeasure programs, SAFETEA-LU continued a grant program structure with multiple grant programs addressing individual countermeasures such as impaired driving, occupant protection, motorcycle safety, child and booster seats, data improvement, and the highway safety formula grant program. These multiple grants often come with different application deadlines, different State matching requirements, and different types of eligibility requirements. While providing maximum flexibility to States to qualify for grant funding during a Fiscal Year, and ably advancing programmatic objectives in each area, these multiple application and matching requirements create resource administration problems for the States, as well as the Department of Transportation. In SAFETEA-LU, Congress directed the DOT to consolidate grant applications, by establishing a process whereby States could apply for all grants with a single application. Unfortunately, the Department was unable to meet this mandate, due to the large number of grant programs and the wide variation in grant criteria. In particular, some grants depend on States passing a certain law to be eligible for a grant that year. The potential to qualify for different grants at different points of the Fiscal Year makes establishing a consolidated grant application impossible.

We look forward to a fruitful dialogue with the Committee and our State and non-governmental partners on potential methods for dealing with the administrative as well as programmatic requirements of our national highway safety program. NHTSA has worked with, and will continue to work with, other U.S. DOT agencies that have a role in improving highway safety within the Department. That includes RITA regarding the ITS Program; FMCSA regarding commercial vehicle safety; and FHWA regarding the roadway infrastructure design and operations, as well as for the Strategic Highway Research Program (SHRP2).

SAFETEA-LU has been a very successful piece of legislation. The Committee, the Congress, the multiple constituencies with an interest in the transportation program and we at the Department can look back on SAFETEA-LU and know that it helped our Nation make significant strides in improving highway safety.

We can be proud of what has been accomplished but also recognize that so much more needs to be done. Clearly, even with the lowest absolute fatality number since 1950 and the lowest fatality rate number in our Nation's history, more than 33,000 fatalities a year on our highways is not a number that we can accept. We need to renew our commitment to finding new and better ways to reach those difficult to reach populations to change their behavior, to make vehicles safer, to develop new technologies to improve our safety margin, so that we can continue to make steady progress in reducing this preventable epidemic of roadway crashes.

We must also anticipate new areas for fruitful effort, such as initiatives to address driver distraction, to address issues before they become serious, national problems.

Under the leadership of Secretary LaHood, the Department looks forward to working with this Committee to address the highway safety challenges of today and into the future. I appreciate the opportunity to be with you today and will be happy to try to answer any questions you may have.

#### SAFETEA-LU Safety Performance Indicators

	2004	Current	Change
Total Fatalities	42,836	33,808	-21%
MC Fatalities	4,028	4,462	+11%
Fatality Rate	1.44	1.13	-22%
Alcohol Impaired Fatalities	13,099	10,839	-17%
Belt Use Rate	80%	85%	+6%
Child Restraint Use, <8	82%	87%	+6%
Universal Helmet Laws	20+DC	20+DC	NA
PBL	21+DC	31+DC	+48%

Senator PRYOR. Thank you very, very much. And thank you for your statement.

And you, along with all the other witnesses, will submit your written testimony for the record. So, thank you for providing that to the Committee.

Let me just dive in here with a few questions. I actually have prepared, literally, 9 pages of questions about these various grant programs, and we can go through a lot of detail and a lot of minutia on it. I may submit some of those for the record and let you respond to those so I don't take up some of my colleagues' time here. But, I do have an overall question first, and that is: I know the Administration is looking at the next highway bill, and I'm wondering, if you know—and you may not know—but is the idea of increasing the fuel tax to fund more infrastructure and more highway safety programs—is that being discussed within the Administration, and could you give us a quick update on that?

Mr. STRICKLAND. Well, there's really not too much of an update, Senator. I apologize for that. But, I can say that there are active and ongoing conversations about the funding mechanisms of the next highway bill. The successes of the fuel economy laws and rules that this Congress passed, and that NHTSA and EPA have implemented, have clearly reduced our fuel consumption in America, which has impacted the gas tax. So we recognize that we'll have to find a way forward in funding our next reauthorization. Those conversations are ongoing between all of the agencies affected, and we will definitely return to the Congress when we have that answer.

Senator PRYOR. You know, one of the things I pick up in my State, even from the folks who want lower taxes and less government, they still are comfortable with us investing in infrastructure. That's a—it's kind of a fundamental government responsibility, and it works, you know, to the overall good of society and to the various communities around the State—I mean around the country.

Mr. STRICKLAND. Actually, I'd like to add one thing about infrastructure, Senator. I think it's absolutely right in terms of our investment for the state of good repair, and obviously in the areas that clearly need new infrastructure for growth and efficiency. But, infrastructure is just a part in the safety calculus. The changes that have been made by the Federal Highway Administration in support of the States—good infrastructure has actually saved thousands of lives, as well, and that cannot be overlooked as we have this overall discussion about NHTSA's programs and the work of this committee.

Senator PRYOR. Right, I agree with that. And I think that there's no question that we should put more money in infrastructure, and I think we ought to put more money into the safety programs, as well. And my guess is that we'd have a lot of safety groups and folks from all over the country who would agree with that. But, the balance we have to find is, you know, How much is enough? I mean—in one way, there's never enough. We can always put more and more and more into it.

Mr. STRICKLAND. That's true.

Senator PRYOR. But, we have to find that balance, and that'll be a challenge for us as we go through this. But, one question I have for you is the issue of collecting accurate data and accurate information from the States. We've heard from various States. In fact,

I'd like to submit a letter, for the record, from the Arkansas State Police.

[The information referred to follows:]

STATE OF ARKANSAS—ARKANSAS STATE POLICE  
*Little Rock, AR, September 23, 2010*

Hon. MARK PRYOR,  
Senate Consumer Protection, Product Safety, and Insurance Subcommittee,  
Senate Commerce, Science, and Transportation Committee,  
Washington, DC.

Dear Chairman Pryor:

In advance of the September 28, 2010 Subcommittee hearing on the Federal highway safety programs, I would like to submit comments for the record. As the Director of the Arkansas State Police and the Governor's Highway Safety Representative for Arkansas, I am a member of the Governors Highway Safety Association (GHSA). GHSA is a non-profit association that represents state highway safety agencies. GHSA's members administer Federal behavioral highway safety grant programs.

Highway Safety continues to be an important issue in the State of Arkansas. Traffic related fatalities and injuries continue to be a major public health problem in this country and in Arkansas. Although we have made some progress, there were still more than 500 traffic fatalities and 13,000 injuries in Arkansas last year. Traffic crashes not only cause devastation to families and individuals, but they also cost the State an estimated \$2 billion in economic loss annually.

To address this problem, the Federal Government must make highway safety a national priority and play a strong role in developing highway safety policies and programs. I concur with GHSA's position on reauthorizing the Federal highway safety programs. Specifically, GHSA urges Congress to:

- Maintain a Strong Federal Role in Highway Safety
- Develop a National Strategic Highway Safety Plan
- Emphasize performance-based planning
- Enhance funding for data improvements
- Consolidate grant programs and streamline grant program administration
- Enhance flexibility
- Improve incentive programs and address such areas as aggressive driving and speeding, teen driving and distracted driving
- Strengthen state programs through accountability, training and research

One area of particular importance to Arkansas is the recommendation to enhance funding for data improvements. To set appropriate performance goals and measure progress, states need adequate data. Unfortunately, obtaining good data is not a simple task. The Section 408 (23 U.S.C. 408) data improvement incentive grant program has helped states improve their highway safety information (traffic records) systems, with particular focus on improvements to the crash data systems. However, this program is funded at only \$34.5 million a year and Arkansas receives only the minimum \$500,000 annually. Unfortunately, enhancements to data systems are very expensive and require sustained resources. Improvements to automate our crash database alone cost millions.

Furthermore, in Arkansas, as in other states, we are increasingly funding improvements to other components of our traffic records systems, such as electronic citation and emergency medical services information systems. With the expectation to collect performance data from the various systems comes a great need for adequate funding to automate data collection and make other improvements to enhance data sharing.

Also, I would like to emphasize opposition to new sanctions. I concur with GHSA's position that incentives are a more appropriate method to encourage state action. In Arkansas, the Section 406 (23 U.S.C. 406), Safety Belt Performance Grant, proved successful by providing additional incentive for the state to pass a primary seat belt law in 2009. The State received a one-time grant award for highway programs. These funds are being put to good use in addressing the State's highway safety problems, especially in program areas where there is little or no available funding. First of all, the state was able to use these funds to educate the public about the new primary seat belt law. In addition, the funds are providing resources in other needed areas such as for the implementation of the State's electronic cita-



tion system, to formulate a program to combat aggressive driving, and for teen driver safety.

Lastly, I would encourage Congress to carefully consider the pending distracted driving proposal, S. 1938, which would provide incentives to states that satisfy certain eligibility criteria. Currently, there are only eight potentially eligible states (Arkansas is not included). However, even those states would not qualify because the criteria are too stringent. We concur with GHSA's recommendation that this proposal be reexamined and adjustments made to allow more states to qualify and receive the necessary funds to implement appropriate countermeasures to address this emerging problem. The reauthorization provides an opportunity for Congress to address distracted driving in a thoughtful and comprehensive manner.

I applaud you and the Subcommittee for your work on highway safety and I appreciate the opportunity to provide these comments for your consideration.

Sincerely,

Colonel WINFORD E. PHILLIPS,  
*Governor's Highway Safety Representative.*

Senator PRYOR. And I know other Senators here may have other documents to submit. We'll be glad to do that.

But, I know that collecting accurate data is a challenge, and I know that there is a program; you know, it's probably underfunded, because, you know, I think my State only gets \$500,000, and that's not a whole lot of money to really try to improve your technology and make your data more accurate.

But, are you finding that with other states? And what is NHTSA's view on how we can improve the accurate collection of data?

Mr. STRICKLAND. Oh, certainly. Data is the backbone of what we do, in terms of being able to identify risks and being able to find the proper countermeasures, and seeing the effectiveness of those countermeasures. Traffic records is one of them. As we funded traffic records in the Section 408 Grant and the National Driver Register, we've been hearing from all the states, of needing more resources in this area, not only for better collection, but the ability to share that data with the Federal Government and with the States. So, it's something that we look forward to working with this committee on in trying to make sure we can improve the efficiency and the usage of the resources and trying to find a way forward to continue our work in modernizing all of our data collection, whether it's the FARS or the NASS or if it's in traffic records.

Senator PRYOR. OK. And my last question, until I turn it over to Senator Wicker, is—there's this new, emerging challenge of distracted driving. And I think that—obviously, with cell phones and other things, but now, with text and just general mobile Internet access, et cetera, it has become a real challenge. I know that Secretary LaHood has been on this issue. I know he has had it—at least one, maybe many conferences on this to try to bring awareness and try to bring consensus on this issue. And Senator Rockefeller has filed a bill, as well.

And I don't know if you've had a chance to look over the Rockefeller bill and if you think that that's a good starting point, or if you think Senator Rockefeller has, you know, figured it out and we just ought to adopt it as-is. Or, I didn't know if you had a—any thoughts on the Rockefeller bill or any recommendations at this point.

Mr. STRICKLAND. Well, you've sort of put me on the spot, in terms—

[Laughter.]

Mr. STRICKLAND.—of Senator Rockefeller's legislation. And I was——

[Laughter.]

Senator PRYOR. That's why you're here.

Mr. STRICKLAND.—I was his Senior Counsel in the Consumer Protection Committee—and part of the drafting of that piece of legislation, so I'm officially meeting myself around the corner on that particular question.

We believe, at DOT, that anything that incentivizes the creation of strong texting and hand-held cell phone laws should be supported. Senator Rockefeller's bill definitely does that, providing incentives of up to \$50 million to the States to encourage hand-held cell phone bans and texting bans. We are very much in support of that proposition, and we're supportive of all of the efforts that may move the fight on distractive driving forward.

Secretary LaHood has been very fixated on distraction. In addition to the second Summit that we held, on the 21st, which was very well attended—over 600 people from around the country came and met to discuss about the way forward on distraction—NHTSA's also in the process of working with the State of New York and the State of Connecticut on two pilot programs with a high-visibility enforcement campaign. It's called "Phone in One Hand, Ticket in the Other." We've had amazing results in the reduction of drivers that are texting and using hand-held cell phones. I am happy to talk about that in more detail, but thank you so much for the question.

Senator PRYOR. Great, thank you.

Senator WICKER.

Senator WICKER. Well, thank you very much, and thank you for your testimony.

Senator Nelson, before he left, was speaking about the wisdom of State governments. So, let me follow up on that with a couple of claims from the Governors Highway Safety Association.

First of all, each State has a strategic highway safety plan, but, in their testimony that will follow, the Governors Association discusses the lack of a national highway safety plan. Do you believe that the lack of such a plan has resulted in fragmentation of Federal behavioral highway safety resources? And should we have such a national plan?

Mr. STRICKLAND. Well, Senator Wicker, the work of NHTSA and the Department of Transportation is dealing with our long-term goal-setting for both the States and the country. Our activities, in terms of our management reviews, in terms of us providing data and guidance to the States, effectively creates that national framework to which you are alluding to. Now, do we have a stated overarching national plan like some of the European countries have? We do not. But, we also have a much different system, in terms of how we organize and we work with the States. The one thing that we have learned over the years is the waxing and waning of how the Federal Government interacts with the States. And, over our several highway bills, that relationship has evolved and improved. I think that keeping the flexibility of the States, while at the same time having the leadership of the Department of Trans-

portation, creates the coordination where I think we gain those efficiencies of scale.

However, any notion of improving that coordination is always a good thing, and we're happy to work with this committee, working with our stakeholders, and GHSA, in trying to find a way forward in better coordination in that area.

Senator WICKER. It does seem a bit ironic, that States are coming forward and saying we need more of a Federal plan, and the Federal Government is seemingly talking about State flexibility and federalism.

But, I'll move on to the next question—again with regard to the Governors Association. They somewhat complained that there are too many incentive grants and there are too many different applications and deadlines. Are you familiar with that—

Mr. STRICKLAND. Very.

Senator WICKER.—complaint? The Governors Association testifies that the behavioral grants should be consolidated into one program with earmarks for specific issues. So, what do you say to that? Would this be a better way to administer the behavioral highway safety grants?

Mr. STRICKLAND. The work in SAFETEA-LU that was taken up in this committee, and in the Congress ultimately, worked to consolidate the number of incentive grants, for this very reason. And I know—

Senator WICKER. So, there were more before—

Mr. STRICKLAND. Yes, there were.

Senator WICKER.—SAFETEA-LU?

Mr. STRICKLAND. Absolutely.

Senator WICKER. Yes.

Mr. STRICKLAND. We consolidated several of them. And as we walk into this reauthorization, we are looking to once again lower the administrative burdens for the States and to consolidate and make things more efficient, in the right way. The one thing we have to be mindful of is that, as we are providing these resources and these programs that are backed by research, that it has to be data-driven. We want to provide the right flexibility, but, if you consolidate too much, you may end up having improper allocation of resources.

I think that we need to have an ongoing conversation with the States in how we consolidate, but we, at NHTSA and the Department, do believe that we can make this process more efficient and less burdensome to the States, and we're looking forward to working with them, to find a way to do that going forward.

Senator WICKER. And one other thing, Mr. Chairman, and then I'll turn it over to Senator Klobuchar; and that is to follow up on the Chair's statement about distracted driving.

Let me make it clear, every member of this committee is interested in doing what we can to prevent accidents caused by distracted driving. It's just important, in my judgment, that whatever we do and whatever scarce resources we have, be spent on research-based results—research-based facts.

The Highway Loss Data Institute just released a new study claiming that they have not found a reduction in crashes after laws take effect that ban texting by all drivers. As a matter of fact,

there's some research to indicate that, in those States, drivers actually take steps to hide their texting, and it results in higher claims and higher accidents. If that's the case, then we need to know that. It may seem counterintuitive, but I think we need to base our funding and base our actions on the real research.

Also, the Insurance Institute for Highway Safety found a four-fold increase in the risk of injury crashes associated with phoning. Their hypothesis is, not only are drivers not complying with the ban, but they are recognizing that using their cell phones is illegal, and they're trying to hide their behavior, which, I mentioned earlier, could exacerbate the risk of drivers taking their eyes off the road.

There are a lot of forms of distracted driving. I know that the young people, who are perhaps the age of my staffers, can take an iPod now into the car, and play that iPod, and there may not be a law against that, but it would very severely distract someone of my technical knowledge.

My daughter was injured in a distracted-driving accident. In that case, the driver was changing a CD, which strikes me as a very dangerous maneuver that, obviously, is done every day, tens of thousands of times, by drivers. It may be that working with an iPod or changing a CD in your CD player is more dangerous than talking on a telephone or texting on a telephone. I don't know. But, I think if we're going to go at the problem, we need to go at it based on real research and not just what seems to us to be the best way to handle that.

So, I can assure you, having had my first-born child injured in a car accident caused by distracted driving, I want to get at the worst kinds of distracted driving. I don't hear anybody talking about changing CDs or playing music or changing the time on a clock, or eating while driving down the road. I just want to make sure that we are targeting the most dangerous kinds of distracted driving.

Mr. STRICKLAND. Mr. Wicker, I could not have said it better myself, in terms of following—

Senator WICKER. Oh, you probably could have.

Mr. STRICKLAND.—and following the research. That's what we are committed to do. We have a long-term research plan that we have provided to the Congress, in terms of how we are going to approach our research. I want to address a couple things that you mentioned in your question to me.

First, about the Insurance Institute for Highway Safety's research. My staff and I are very familiar with this. We have a lot of concerns about how the study was conducted, because their methodology did not control for factors that affect the number of crashes, like enforcement, like education programs, like high-visibility campaigns, which we are currently undertaking in Hartford, Connecticut, and in Syracuse. In those two States where we have had high visibility campaigns along with strong enforcement, we have seen, in Hartford a 56-percent drop in hand-held use; and in Syracuse, New York, we had a 38-percent reduction in hand-held cell phone usage. For texting, it was 68 percent in Hartford, and 42 percent in Syracuse.

Frankly, I think that the Insurance Institute's analysis really is taking a look at data that is based on a lot of laws that may not necessarily be strictly enforced. There are a lot of other factors that are in play, and we have several questions out to the Insurance Institute about their methodology. Frankly, we take a lot of this to task, and we believe that our research, ongoing and what we know right now, actually does identify the proper risk.

So, while we stand forward and we are willing to take any research, we want to make sure that it is scientifically valid and sound, and we have significant questions about that HLDI study.

On your second point, about other issues that may be distracting, you're absolutely right. Actually, the most distracting thing in your car that we found in our statistics is an insect. Insects are off the charts. The number of crashes correlated to having a bee or something in your car is well above texting and handling a cell phone. Eating, having active teenagers in the backseat of the car, with the teenage driver, there are all kinds of things that are distractions. Bottom line being is this—

Senator WICKER. That little pig going “wee, wee, wee.”

[Laughter.]

Mr. STRICKLAND.—oh, that little pig, exactly, that—

[Laughter.]

Mr. STRICKLAND.—he's especially annoying.

But, the point being—is this. The driver's job behind the wheel is to drive. Hands at 10 and 2, and being alert and aware. Whether you're handling a CD, handling an iPod, eating a double cheeseburger, or playing with your radio, all of those things are distracting. You should have your eyes on the road. Our statistics have shown that if your eyes are off the road for more than 4 seconds, your risk of accidents are just exponentially higher.

So, you're absolutely right. It isn't just about texting and driving using your phone; it's about all distractions. Our work at NHTSA is encompassing education and enforcement programs to deal with all of that.

Senator WICKER. Just briefly, you're not suggesting that the Insurance Institute for Highway Safety would have a reason to skew their numbers or cook the research—

Mr. STRICKLAND. Oh, no, I'm not saying that they're having their fingers on influencing research in any particular way. I just think their data is wrong.

Senator WICKER. I see. Thank you.

Mr. STRICKLAND. Thank you.

Senator PRYOR. Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR,  
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Well, thank you very much.

And thank you also for bringing that up, Senator Wicker.

And I think you got a sense—Administrator Strickland came to my State and kicked off a Distracted Driving Summit, and there were hundreds and hundreds of teenagers, and he not only impressed them with how cool he was, because he read his whole notes off the iPad—they were literally, like, “Whoa”—

[Laughter.]

Senator KLOBUCHAR.—but then just his passion for the issue and the way he could relate to these kids by talking about double cheeseburgers, it really worked. And so, I think that, if I could paraphrase what you were talking about here, it's just—it is—putting these laws on the books can never be a bad thing, but it's what you do with those laws. And so, that's what I want to approach, a little bit. And you want to get the message out that it's—you don't want to be texting while you're driving. I actually think it would be helpful for certain enhanced penalties for when people get—just—I'm looking at my old prosecutor's job—sometimes it's a per se violation, if someone's killed or maimed, if you have a DW—a blood alcohol above a certain level. You could say the same thing with texting; if you're texting, it's a per se. I think that would be helpful. But—and those are actually easier to enforce and prove, because when someone's—dies or killed, that—someone's killed or is hurt, then that's a huge police investigation.

But, for the everyday driver, could you talk a little bit about the enforcement? And we know we're not going to be able to pick up every single person who's texting. But, I've seen, with seatbelts, having those days where people know they're going to do—that the cops are going to do it, it can have a long-term effect.

And I guess, just with the seatbelt issue, if you could talk, or maybe look for me, on data showing that—when they first put out seatbelt laws, I bet you it didn't change anything the next year.

Mr. STRICKLAND. You're right.

Senator KLOBUCHAR. But, over time, as there was enforcement mechanisms, as things happened, it did change seatbelt use, which I understand is one of the main reasons we're having less fatalities on the road.

So, do you want to talk about this in the context of history with seatbelts?

Mr. STRICKLAND. Absolutely, happy to, Senator Klobuchar, and thank you for the opportunity.

The seatbelt program, actually, the “Click It or Ticket” program, began in North Carolina in 1984. We adopted it at the national level and really began putting resources and taking it nationwide in 2001. Before we began our wide enforcement messaging on seatbelts, seatbelt usage was at 60 percent in America—six-zero. Today for 2009, our seatbelt rate use is up to 85 percent now. That's because, when you have high-visibility campaigns advertising at the times when people are watching TV during major television events, sporting events, and then you have cops everywhere enforcing the law, and you do it on a regular basis, people get the message. They recognize the fact that it's points on your license, it's a huge fine, and behavior changes. We've seen that.

We've only been at it for about a few months with the same type of campaign, on distracted driving, “A Phone in One Hand, Ticket in the Other.” But, as I conveyed to Senator Wicker, just a few moments ago, our results are just fantastic. We are looking at huge reductions in people using their hand-held cell phone and people texting, because when you have waves of police officers giving tickets—they've given over 4,500 tickets in Syracuse, New York, and they've given about 4,200 tickets out in Hartford, Connecticut. The first day we kicked that campaign off, they gave out 250 tickets in

an hour in Syracuse, New York. I'll guarantee you that people spread the word. When people know that you're getting pulled over for using your phone, people stop using their phone. That's what we're seeing.

We're going to wait for the full pilot to complete. It takes a year for us to finish the pilot, but I am very heartened by these results and what we've seen from belts and what we've seen from impaired driving—"Over the Limit and Under Arrest"—I feel very strongly that this exact type of process and campaign and enforcement will work for distracted driving.

One last note. The captain from Syracuse, New York, actually came to the Distracted Driving Summit, last week, and talked about how they are learning countermeasures and evolving and figuring out how drivers adopt behavior and try to sneak in—they figured out how to position themselves and how to look into the cars. Not only are they effective, but they're getting better. The more that we do this type of thing, and the more that we do it in more States around the country, I think the more effective this program will be, and we're going to see huge numbers move, just like we did in seatbelts.

Senator KLOBUCHAR. Yes, I mean, it just goes without—anyone who has driven and has tried doing this—and I know a lot of people in this room have—and you've had that moment where you sort of veer off the road a little bit, and you get back on, and you think, "If someone had been standing there, if someone had been on a bicycle, if another car had been there, that would have been it."

So, it just—for me, we don't need the evidence that it's a problem. We know that. And we have the decrease in fatalities, due to seatbelt laws and due to DWI laws. But I think what I remembered from speaking at your conference, and the research we did, there still had been some increase with teen accidents and teen driving that people believe is related to this, the texting.

There are two approaches—was brought up—Senator Rockefeller's bill—as we look at how to get States to come onboard with this. One is the carrot approach. I support both of these, am on both bills. One is the stick approach. I wondered if you wanted to comment, weigh in on these two different approaches. The stick being with highway funds, to try to get States to move on distracted driving laws, who haven't moved; and the other is incentives.

Mr. STRICKLAND. The Department of Transportation believes in any methodology that improves safety. We find that incentives have worked. We've found that sanctions have worked. We support both.

Senator KLOBUCHAR. OK, very good. Thank you for that.

The other bill that I wanted to mention was a bill I have with Senators Gillibrand and Dodd, the STANDUP bill, with—it looks like graduated driving standards. This isn't just about texting; this is about realizing that there is such a much higher accident fatality rate with teenaged drivers, and especially when they're younger.

Many States, like mine, have graduated drivers licenses and—where you get—you know, you can only drive with a parent at first, and then you work your way up.

What do you think? Do you think those work? And do you want to comment on graduated licensing?

Mr. STRICKLAND. Absolutely, the STANDUP Act is a great piece of legislation, and we're very supportive of what you're trying to do in that bill.

Graduated drivers licenses is the foundation for teaching young drivers how to be good citizens of the road. Now, we've seen variance in the rigidity and the strictness of graduated drivers license laws around the country. We support good, strong ones, which really have younger drivers driving with adults, making sure that they don't have other teen passengers in the car to distract them, that there is good educational component along with the on-road experience. There are real opportunities for graduated drivers licenses, and the States that have good laws have shown remarkable increases in safety of teens, and we are very supportive of all GDL laws that take that really strong approach.

Senator KLOBUCHAR. Well, I will report that to my 15-year-old daughter, because she smiled when I told her, and said "I'll be driving for a long time before you ever get that through Congress."

[Laughter.]

Senator KLOBUCHAR. The other thing, I wanted to thank you again for including me in that Distracted Driving Summit. I thought it was incredible. I think Secretary LaHood's leadership, your leadership, has been just so strong on this. And, to me, a lot of this—we've got to get these laws in place. It's pretty simple. Then we have to get that education campaign; and that, combined with enforcement.

We've got a roadmap from work with seatbelts. We know how we can do this, where it won't be that expensive. What's expensive is all the lost lives and the accidents and everything that's happening because of this distracted driving. So, I want to thank you for that.

And also, I will tell you, Mark, if—Senator Pryor—if you ever go to the Distracted Driving Summit, it is the most attentive audience in the world.

[Laughter.]

Senator KLOBUCHAR. No one is doing a BlackBerry, and they all listen. So, I highly recommend it.

Thank you very much.

Mr. STRICKLAND. No, Senator, thank you. And thank you for your attendance at the Summit. We really did appreciate that and thank you for your ongoing leadership in this area.

Senator PRYOR. Mr. Strickland, thank you for being here today. And, like I said, I have some follow-up questions that I'll submit in writing. We're going to leave the record open for 2 weeks, so we'd love to get those to you as quick as possible. And I'm sure some others have those, as well.

Thank you.

Mr. STRICKLAND. Yes, sir. Senator, I'd also like to submit for the record this chart, on our SAFETEA-LU Performance Measures, that I have on display. It gives a summation of all of our programs and the impact they've had on moving safety forward.



Senator PRYOR. OK, great. Well I appreciate that. Yes, we'll make that part of the record.

[The information referred to follows:]



**SAFTEA-LU  
Key Performance Measures**

	2004	Current	Change
Total Fatalities	42,836	33,808	-21%
Motorcycle Fatalities	4,028	4,462	+11%
Fatality Rate	1.44	1.13	-22%
Alcohol Impaired Fatalities	13,099	10,839	-17%
Seat Belt Use Rate	80%	85%	+6%
Child Restraint Use, <8	82%	87%	+6%
States With Universal Helmet Laws	20+DC	20+DC	NA
States With Primary Belt Laws	21+DC	31+DC	+48%

Senator PRYOR. And I do have one follow-up question. Again, it relates to Senator Rockefeller, who couldn't be here today. But, I—there's a—NHTSA is undergoing the Occupant Ejection Mitigation Rule.

Mr. STRICKLAND. Yes.

Senator PRYOR. Do you have an update on that for the—

Mr. STRICKLAND. Yes, I do, actually.

Senator PRYOR. I know that you guys are looking at trying to reduce the number of ejections and, you know—you know the—

Mr. STRICKLAND. Absolutely.

Senator PRYOR.—statistics better than I do. But, I know that you guys are in process, so if you could give us that update, that'd be great.

Mr. STRICKLAND. Absolutely. In December 2009, we issued our Notice of Proposed Rulemaking on the ejection mitigation standard. What this deals with is protecting people against full and partial ejections through side windows, especially those that happen in rollover crashes.

The comment period closed in February of this year and we intend on issuing the final rule by January of 2011, and we are on pace to do that.

Senator PRYOR. Good. Well, thank you. And again, we may have some more follow-ups there, as well, but thank you.

Mr. STRICKLAND. Thank you so much, Senator. I appreciate it.

Senator PRYOR. You bet. Thank you.

And what we'll do now is bring up our second panel. And what I'll—would like to do is just go ahead and introduce them very briefly as the staff is swapping out the microphones and all that.

And we have a vote on the floor, here, in about 10 minutes, so—we have four witnesses. I'd love for the—each one to keep their opening statements to 5 minutes or less, emphasis on the “less.” That'd be great, if we could. And then what I'll do is probably recess the Subcommittee, run and vote. I think we have two votes. And I'll come right back. So, we may take a 10-, 15-, whatever it may take, but a few-minute recess, and then come back in for the testimony on that second panel.

Our first witness is Ms. Jacqueline Gillan, Vice President, Advocates for Highway and Auto Safety. Our second will be Mr. Robert Strassburger, Vice President, Vehicle Safety & Harmonization Alliance of Automobile Manufacturers. Third will be Ms. Laura Dean-Mooney, President, Mothers Against Drunk Driving. And fourth is Mr. Neil Pedersen, Administrator of the Maryland State Highway Administration, on behalf of the Governors Highway Safety Association.

So, what I'd like to do is, Ms. Gillan, ask you to make your statement, and again, remind all the witnesses that we'll put your written statement in the record, and if we could be 5 minutes or less, that'd be great.

**STATEMENT OF JACQUELINE S. GILLAN, VICE PRESIDENT,  
ADVOCATES FOR HIGHWAY AND AUTO SAFETY**

Ms. GILLAN. OK, thank you.

Is this on? OK. There it is. Thank you.

Good morning, Chairman Pryor and Senator Klobuchar. Thank you for inviting me to testify.

First of all, let me commend this committee for being an important bipartisan force in advancing highway and auto safety issues. In fact, you've had a very busy last year, in moving several pieces of key legislation, which advocates in the safety community strongly support: the Motor Carrier—the Motorcoach Enhanced Safety Act, the Motor Vehicle Safety Act of 2010, in response to sudden unintended acceleration in Toyota vehicles, and the Distracted Driving Prevention Act. And we strongly hope that these bills will be passed before the end of the 111th Congress.

Clearly, the recent announcement about a significant drop in highway fatalities is great news for all of us. However, annual motor vehicle deaths are still equivalent to a major airplane crash every single day of the year. Recent declines in highway deaths these past 2 years are almost certainly related to the economic downturn, high gas prices, and a decrease in discretionary driving. In fact, I have a chart, in my testimony, which shows how declines in highway fatality corresponds with economic downturns.

Currently, we have at hand both traffic safety technological solutions and safety programs that have the potential to make drastic reductions. But, the problem is, we're waiting too long to act on some of these proven and effective safety solutions.

Over the past 15 years, through different authorization, we've spent billions of dollars on State traffic safety programs and various issue-specific incentive grants. And, while these are worthwhile efforts and have resulted in some really terrific State and local law enforcement campaigns, they suffer from two major flaws. First, the Highway Safety Program's grant programs generally lack

safety performance measures to provide accountability and ensure effectiveness. And second, the various incentive grant programs have not resulted in the adoption of the most effective highway safety laws by every State. And over time, the States have successfully insisted on program flexibility, both in terms of funding and performance, at the expense of accountability and effectiveness.

And we strongly support the approach taken in the House Transportation Infrastructure Committee draft authorization bill to establish performance measures for these traffic safety grant programs, so that we can increase accountability and we can direct resources that have the best opportunity for high payoff.

Another significant obstacle in reducing highway deaths and injuries is this lack of uniform traffic safety laws. And included in my testimony are various maps which show which States have motorcycle helmet laws, primary seatbelt laws, tough drunk-driving laws, and teen driving laws. And right now, we have this patchwork quilt, and it's really essential that we have Federal leadership in this area. And it was Federal leadership that resulted in every single State passing a minimum-21 drinking age, because of Senator Lautenberg's efforts, and .08 BAC, as well as minimum licensing standards for commercial drivers, sponsored by former Senator Danforth, and a zero-tolerance BAC law to combat underage drinking and driving, sponsored by the late Senator Byrd.

Every time Congress has used a sanction, every State has adopted the law, and not a single State has ever lost a single dollar of Federal aid highway funds, and thousands of lives have been saved. There are—no question that sanctions work.

And, while incentive grants may be the appropriate means to start the process of encouraging States to act, sanctions have always been successful in finishing the job. And there are several examples of that in SAFETEA-LU, where we have a primary incentive grant program, a half a billion dollars, and we still don't have every State with a primary enforcement seatbelt law. And every State needs that.

We also commend Senator Klobuchar for the STANDUP Act. Motor vehicle crashes remain the leading cause of death for teenagers in every State. That's really an important bill that starts out with incentive grant programs and then moves to sanctions.

Some advice. as a former mother of two teens, I tried desperately to get Maryland—the State of Maryland to toughen their laws before my children started driving. It didn't work out that way, so there were two laws in our house. There was Maryland law and Mom's law. And Mom's law prevailed. And I can say I safely got them through that period. So.

But, definitely, we want to make sure that every teen in every State is covered by a strong graduated drivers licensing law. We know too much about how successful these laws—and we know that, right now, too many teens are dying every day on our highways.

Another important issue is impaired driving. It is still a scourge on our highways, and we strongly support legislation, introduced by Senator Lautenberg, on requiring States to pass ignition interlock laws.

I could go on. As you know, we have worked very closely with this committee on the Distracted Driving Prevention Act, which we support, and also the Alert Drivers Act, by Senator Schumer.

In conclusion, there are really no acceptable excuses anymore for delaying, any longer, the adoption of these lifesaving laws. It's really like withholding a vaccination. And we also need to improve the effectiveness of traffic safety programs, and particularly some of the incentive grant programs.

I appreciate the opportunity to testify. We look forward to working with you. Clearly, the reauthorization bills have always had an important and strong safety component, and we're very happy with the bills that are moving through this committee right now.

Thank you.

[The prepared statement of Ms. Gillan follows:]

PREPARED STATEMENT OF JACQUELINE S. GILLAN, VICE PRESIDENT,  
ADVOCATES FOR HIGHWAY AND AUTO SAFETY

Good morning Mr. Chairman, Ranking Member, and Members of the Senate Committee on Commerce, Science, and Transportation. I am Jacqueline Gillan, Vice President of Advocates for Highway and Auto Safety (Advocates). Advocates is a coalition of public health, safety, and consumer organizations, insurers and insurance agents working together to prevent highway deaths and injuries through the adoption of safety policies and regulations and the enactment of state and Federal safety laws. This year, Advocates celebrated 20 years as a unique coalition dedicated to improving highway and auto safety by addressing it as a public health issue.

Thank you for the opportunity to testify before the Commerce, Science, and Transportation Committee, which has been an important force in advancing highway and auto safety laws these past two decades. Members of this Committee, Democrats and Republicans, have been leaders on numerous safety legislative efforts addressing impaired driving, occupant protection and motor carrier safety. In fact, there are several critically important safety bills that this Committee is advancing and Advocates strongly supports that we hope will be enacted into law during the remaining days of the 111th Congress, including S. 554, the Motorcoach Enhanced Safety Act of 2009, S. 3302, the Motor Vehicle Safety Act of 2010 (MVSA) and S. 1938, the Distracted Driver Prevention Act of 2009. In every prior surface transportation authorization bill enacted by Congress in the past 20 years, Advocates' safety priorities have focused on supporting enactment of programs, policies and laws that lead to safer roads, safer vehicles and safer drivers. As I discuss in this testimony, significant progress in achieving reductions in highway fatalities and injuries, and in preventing a return to higher fatality levels, will require Congress to adopt new safety countermeasures in all three areas. As the Committee considers the needs for traffic safety programs in the next surface transportation authorization bill there are a number of issues that we urge you to consider that will improve safety nationwide and ensure that the recent downward trend in traffic fatalities is not merely a short-term statistical blip. All of our proposals are effective both in terms of preventing crashes, saving lives, reducing disabling injuries, and saving billions of dollars for our Nation.

**Overview of Traffic Safety**

Traffic safety for the past two decades reflects both our successes and failures as a nation to protect our citizens from the tragic loss of life, serious physical injuries and enormous costs imposed by motor vehicle crashes. We have been successful in driving down the annual fatality rate over the long-term by increasing seat belt use and child occupant protection, enacting tough drunk driving countermeasures, adopting truck size limits, requiring vehicles to be equipped with proven safety technologies like airbags and electronic stability control, and designing more crash-worthy vehicles.

At the same time, however, there is a major unfinished safety agenda that Congress needs to address. Recent deaths and recalls involving Toyota vehicles have revealed resource and regulatory gaps in our government's oversight and enforcement of safety defects, revolving door concerns involving agency staff, overdue vehicle safety standards and the lack of transparency that has blocked consumers from access to essential information that affects their safety.

Additionally, we have failed to close gaps in state traffic safety laws that would prevent many drunk drivers from getting behind the wheel, protect novice teen drivers by enacting strong graduated driver licensing (GDL) programs in every state, stop the huge number of occupant fatalities by requiring seat belt and motorcycle helmet use, and protect the public from emerging safety threats such as distracted driving and dangerous overweight trucks. All of these safety problems result in thousands of preventable highway fatalities each year. The failure of all states to adopt the most effective safety requirements in these areas is a national tragedy that impedes the best intentioned programs from achieving national safety goals.

### Recent Data Trends

For 15 years, from 1993 through 2007, the annual national traffic fatality total exceeded 40,000 deaths a year. Despite improvements in the fatality rate, the actual number of highway deaths remained relatively static, creeping up to as many as 44,000 deaths per year, with a cumulative total of more than 630,000 traffic deaths in that decade and a half.<sup>1</sup> Yes, the continual decline in the overall fatality rate meant that despite annual increases in registered vehicles and vehicle miles traveled (VMT), our efforts were holding the fatality total in check. However, it also signaled an inability to make sufficient and sustained progress on the core safety issues that contribute to the unacceptably large annual death toll. The fact that the annual number of fatalities remained constant meant that the core safety problem was not getting any smaller. Not only does this level of tragic, needless loss translate into over 100 persons killed each and every day—the equivalent of a daily commercial passenger airline crash—but it exacts an annual economic toll of more than \$230 billion<sup>2</sup> in economic costs—a yearly crash “tax” of about \$800 for every child, woman and man in the United States.

The most recent safety data provides welcome news—deaths are down and many lives have been saved. Traffic fatality and other indicators in the past 2 years have dropped below 40,000 deaths for the first time since 1992. In the past 2 years reductions in fatalities exceeded all predictions with traffic deaths dropping to 37,423 in 2008 and to 33,808 in 2009.<sup>3</sup> While these improvements are gratifying because they mean fewer lives were lost on our highways, it does not necessarily mean that we have permanently broken through the 40,000 fatality barrier and can relax our efforts to improve public safety. Even with the recent decreases in annual fatalities, motor vehicle crashes remain the leading cause of death for Americans ages 3 to 34.<sup>4</sup> If history is our guide, the 2008–2009 fatality decrease is likely to be only a temporary decline that will certainly reverse, as has occurred following each previous decrease in fatalities that accompanied economic downturns. Unless Congress takes additional steps to ensure effective safety programs are in place to prevent a return to fatality levels that exceed 40,000 deaths per year, history will be repeated.

### Drops in Highway Deaths Correlate with Economic Downturns

A significant portion of the current fatality reduction is due to the recessionary downturn in the national economy beginning in 2007. Historically, declines in traffic fatalities are correlated with reductions in economic activity and disruptions to the national economy. It is well documented that the economic impact of events such as high gas prices, extensive unemployment and recession are accompanied by large decreases in fatality statistics due to reduced discretionary driving and economic activity. To place the recent fatality figures in perspective, the chart included in my testimony indicates that at least since 1971, highway traffic deaths have temporarily declined each time the national economy has experienced a recession, only to increase again as the economy recovered.

<sup>1</sup> *Traffic Safety Facts 2007*, Table 4, p. 18, DOT HS 811 002, National Highway Traffic Safety Administration (NHTSA).

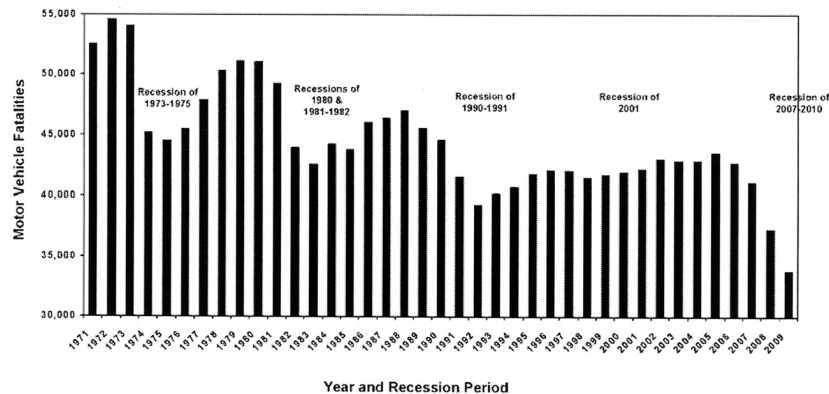
<sup>2</sup> *The Economic Impact of Motor Vehicle Crashes 2000*, DOT HS 809 446, National Highway Traffic Safety Administration (NHTSA) (May 2002) available at <http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/Communication%20&%20Consumer%20Information/Articles/Associated%20Files/EconomicImpact2000.pdf>.

<sup>3</sup> *Highlights of 2009 Motor Vehicle Crashes*, Traffic Safety Facts Research Note, DOT HS 811 363, NHTSA (Aug. 2010).

<sup>4</sup> *10 Leading Causes of Injury Death by Age Group Highlighting Unintentional Injury Deaths, United States—2006*, National Vital Statistics System, National Center for Health Statistics, Center for Injury Prevention and Control, CDC.

### U.S. Recession Periods and Motor Vehicle Fatalities

Chart shows correlation between U.S. recessions and motor vehicle fatalities, 1971-2009.



Sources: The National Bureau of Economic Research, <http://www.nber.org/cycles/summary.html>; Fatality Analysis Reporting System (FARS); National Highway Traffic Safety Administration

In June, the National Highway Traffic Safety Administration (NHTSA) issued a report that found “similar significant declines in fatalities were seen during the early 1980s and the early 1990s. Both of these periods coincided with significant economic recessions in the United States.”<sup>5</sup> The NHTSA report goes on to document the striking association between the decline in fatalities, especially among younger drivers ages 16 to 24, and unemployment rates in major cities.<sup>6</sup> “[L]arge fatality declines tended to coincide with areas that had higher increases in rates of unemployment.”<sup>7</sup>

There is good reason to believe that there is a cause and effect relationship because as economic conditions deteriorate, especially when accompanied by high unemployment rates, spending on gasoline and travel decline as well. Even before the agency report was issued, the NHTSA Administrator, David Strickland, cautioned that while the downward trend in fatalities is encouraging, “do not expect [it] to continue once the country rebounds from its current economic hardships. With any rebound, the expectation is that discretionary driving will increase, which in turn may reverse fatality reductions with increased exposure.”<sup>8</sup> The question for the safety community, government leaders and elected officials is how can we sustain and improve the windfall reduction in fatalities as the economy rebounds.

#### The Unfinished Safety Agenda

As the economy recovers and economic activity, employment and discretionary driving return to pre-recession levels, so too will the number of motor vehicle crashes and the traffic fatality total. NHTSA has noted, however, that following past recoveries while traffic fatalities increased to higher levels the fatality total did not return to the levels that existed prior to the recession.<sup>9</sup> While true, this outcome is not guaranteed. Most likely, the reduced levels of annual fatalities experienced after the previous two recessionary periods were the result of improved safety regulations and programs adopted in the years preceding the recovery. We have cost-effective, successful safety countermeasures at hand that can address both traffic safety and technological improvements but we are waiting too long act. For this reason, it is critical that Congress adopt strong safety measures in the next surface transportation reauthorization bill if we are to ensure that the annual fatality total remains at or below the 2009 level of 34,000 traffic fatalities.

<sup>5</sup> *An Analysis of the Significant Decline in Motor Vehicle Traffic Fatalities in 2008* (Significant Decline Report), pp. 1–2, DOT HS 811 346, NHTSA (June 2010).

<sup>6</sup> *Id.*, pp. 17–22, using Bureau of Labor Statistics unemployment rates for Metropolitan Statistical Areas.

<sup>7</sup> *Id.* at p. 2.

<sup>8</sup> Budget Estimates, Fiscal Year 2011, Statement of the Administrator at 1–2, NHTSA (Feb. 2011).

<sup>9</sup> Significant Decline Report, p. 2.

### The Traffic Safety and Incentive Grant Programs

Over the past 15 years, through three separate authorization laws,<sup>10</sup> the Nation has spent billions of dollars on traffic safety programs comprised of the Highway Safety Programs (Section 402)<sup>11</sup> and various issue-specific incentive grant programs.<sup>12</sup> The dollar amounts are huge: more than \$3.5 billion has been authorized for highway safety and various incentive grant programs over the past 10 years. The highway safety and incentive grant programs have supported many worthwhile efforts, especially state and local enforcement campaigns that have been the bulwark of local safety initiatives. Also, several states have adopted optimal safety laws in response to the incentive grant programs. In part as a result of these efforts, NHTSA estimates that many lives have been saved through seat belt and child restraint use.<sup>13</sup> Yet, no discernable progress was made in bringing down the total number of traffic deaths until 2008. While these programs are the cornerstones of Federal and state traffic safety efforts, they suffer from two major flaws. First, the highway safety grant programs generally lack safety performance measures to provide accountability and ensure effectiveness. Second, the various incentive grant programs have not resulted in the adoption of the most effective traffic safety laws in all states.

### Lack of Performance Measures and Effective Oversight

The Section 402 highway safety grant program has been the traditional means of providing the states with Federal funding to support state and local safety initiatives, education and enforcement efforts. Over time, however, the insistence on providing greater program flexibility, both in terms of funding and performance, has complicated program accountability and oversight. By 1998, NHTSA had “adopted a performance-based approach to oversight, under which the states set their own highway safety goals and targets. . . .”<sup>14</sup> Even with each state developing an annual safety plan, weaknesses in state plans were revised through subsequent “improvement plans” but agency regional offices made limited and inconsistent use” of the revised plans.<sup>15</sup> In fact, Congress had to require that NHTSA review each state highway safety program at least once every 3 years and perform other standard oversight procedures.<sup>16</sup>

The incentive grant programs also lack adequate performance measures to determine effectiveness. According to the Government Accountability Office (GAO), “state performance is generally not tied to the receipt of the grants. . . .”<sup>17</sup> In addition, of the current incentive programs, “three of the five grants [programs] do not include performance accountability mechanisms that would link the receipt of grant funds to states’ ability to meet those performance goals.”<sup>18</sup> Despite the increased management reviews and oversight of state programs required by Congress, GAO found that NHTSA does not analyze, at the national level, the agency’s recommendations to states made as part of the review process or systematically track whether states have implemented the agency’s recommendations.<sup>19</sup> Most damning, in 2008 GAO concluded that over the previous 10 years a key indicator of program effectiveness—traffic fatalities—had not improved.<sup>20</sup>

Although in the 2-years since the GAO report there has been a downturn in total traffic fatalities, Advocates remains convinced that the traffic safety programs are

<sup>10</sup>The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59 (Aug. 10, 2005); the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178 (June 9, 1998); and, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240 (Dec. 18, 1991).

<sup>11</sup>23 U.S.C. § 402.

<sup>12</sup>SAFETEA-LU included incentive grant programs for occupant protection, safety belt performance, traffic safety information systems, alcohol-impaired driving countermeasures, motorcyclist safety, and child safety and child booster seat safety.

<sup>13</sup>*Lives Saved in 2008 by Restraint Use and Minimum Drinking Age Laws*, Traffic Safety Facts, DOT HS 811 153, NHTSA (June 2009).

<sup>14</sup>*Highway Safety: Better Guidance Could Improve Oversight of State Highway Safety Programs*, p. 1, GAO-03-474, Government Accountability Office (GAO) (Apr. 2003).

<sup>15</sup>*Id.*, p. 4.

<sup>16</sup>23 U.S.C. § 412; enacted as Title II, §2008(a), SAFETEA-LU, Pub. L. 109-59 (Aug. 10, 2005).

<sup>17</sup>*Traffic Safety: Grants Generally Address Key Safety Issues, Despite State Eligibility and Management Difficulties*, p. 4, GAO-08-398, GAO (Mar. 2008).

<sup>18</sup>*Id.*

<sup>19</sup>*Traffic Safety Programs: Progress, States’ Challenges, and Issues for Reauthorization*, Statement of Katherine Siggerud, Managing Director Physical infrastructure, p. 3, Testimony Before the Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure House of Representatives, p. 3, GAO (July 16, 2008).

<sup>20</sup>*Id.*

in desperate need of clear and specific performance measures. The approach taken in the House Transportation and Infrastructure Committee draft reauthorization bill has merit. It requires state safety plans to include “quantifiable performance targets” and also directs the Secretary of Transportation to establish performance targets in each safety category.<sup>21</sup> This will go a long way toward placing the grant programs on a sounder footing in terms of providing greater accountability and will, ultimately, improve the effectiveness of the highway safety and incentive grant programs.

#### **Grant Programs Have Not Resulted in All States Adopting Basic Safety Laws**

The traffic safety and incentive programs have not resulted in the adoption of optimal safety laws by all states. Advocates “2010 Roadmap Report”<sup>22</sup> evaluating state adoption of 15 basic traffic safety laws makes it abundantly evident that many states have not taken the vitally important and proven safety actions that are urgently needed to save lives on our highways. Because states receive funding, irrespective of whether the state has adopted primary enforcement seat belt, strong GDL programs, alcohol ignition interlock, all-rider motorcycle helmet, and other effective traffic safety laws, the program cannot achieve maximum lifesaving benefits. New York was the first state to adopt a primary enforcement seat belt law in 1984—over 25 years ago—yet today only 31 states and the District of Columbia have adopted this critical safety law. Despite the fact that Congress provided an incentive grant program with \$500 million to encourage states to adopt primary enforcement seat belt laws in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU),<sup>23</sup> only 10 states have enacted primary enforcement laws since 2005.<sup>24</sup>

States that have adopted primary enforcement laws have maximized the effort to increase belt use rates and use the program grants to reinforce the message through public information, education and enforcement. It is well documented that states with primary enforcement seat belt use laws generally increase seat belt use rates by 10 percentage points or more after enactment of the law.<sup>25</sup> However, states that have not enacted primary enforcement laws are not making the maximum effort to increase belt use rates. This is of critical importance because each year thousands of people die needlessly just because they did not buckle up.<sup>26</sup>

Incentive grant programs should be leveraged with requirements that all states must eventually adopt policies that have proven effective in improving safety. Experience has shown that the most efficient way to increase public awareness and compliance with safety policies is through the passage of state laws, coupled with public education and local enforcement. Time after time, in state after state, it has been shown that education without the law does not accomplish the goal of improved traffic safety. We found this out in our early efforts to reduce drunk driving. Slogans, public service announcements, and key chains were ineffective strategies but tough drunk driving laws with strong penalties were effective. While incentive programs are the appropriate means to start the process of encouraging states to adopt tried and true safety practices, Congress must eventually require compliance with proven public safety policies through the use of sanctions of Federal-aid highway funding.

For this reason, Advocates believes it is already time to turn incentive grant programs into sanctions in order to advance adoption of laws that are proven to dramatically save lives. With regard to primary enforcement seat belt laws, all-rider motorcycle helmet laws, comprehensive teen driving laws and impaired driving laws, the scientific data is overwhelming and it is beyond question that these laws

<sup>21</sup> Surface Transportation Authorization Act of 2009, § 2003, Transportation and Infrastructure Committee, markup draft [Committee Print] (June, 2009).

<sup>22</sup> *Teens, Texting, Tragedy*, The 2010 Roadmap To State Highway Safety Laws, Advocates (Jan. 2010) (2010 Roadmap Report) available at <http://www.saferoads.org/2010-roadmap-state-highway-safety-laws>.

<sup>23</sup> Grants for primary safety belt use laws, Title II, § 2005, SAFETEA-LU, codified at 23 U.S.C. § 406.

<sup>24</sup> *Grants Generally Address Key Safety Issues, Despite State Eligibility and Management Issues*, Government Accountability Office (Mar. 2008), available at <http://www.gao.gov/new.items/d08398.pdf>.

<sup>25</sup> Adoption of primary enforcement seat belt laws increased seat belt use rates by 11 percent in New Jersey, 13 percent in Alabama and 14 percent in Michigan, *Strengthening Safety Belt Use Laws—Increase Belt Use, Decrease Crash Fatalities and Injuries*, Traffic Safety Facts, Laws, NHTSA (Apr. 2004) available at <http://www.nhtsa.gov/people/injury/new-fact-sheet03/SeatBeltLaws.pdf>.

<sup>26</sup> In 2008, NHTSA estimated that an additional 4,152 lives could have been saved with 100 percent belt use. *Lives Saved in 2008 by Restraint Use and Minimum Drinking Age Laws*, p. 1, Traffic Safety Facts, DOT HS 811 153, NHTSA (June 2009).



save lives and reduce state and Federal health care costs. These laws are like a vaccine and every family in every state should be protected. The maps included in my testimony show that state adoption of optimal safety laws has resulted in a patchwork quilt of lifesaving laws across the country. Incentive grants have never been able to achieve uniform adoption of critical traffic safety laws and it is time to turn the incentives into sanctions. For this reason, Advocates supports the House Transportation and Infrastructure Committee highway reauthorization bill which includes proposed sanctions for states that fail to enact primary seat belt enforcement and alcohol ignition interlock laws.<sup>27</sup> Advocates' supports these provisions because when it comes to public safety, sanctions save lives.

### **When Congress Acts, States React and Lives Are Saved**

Congressional leadership is critical and has been effective in encouraging state action with the adoption of Federal sanctions. The potential withholding of Federal highway construction funds—sanctions—has been an effective and successful means to expedite state passage of safety laws and to create a uniform, national safety policy. Over 20 years of legislative history has proven that when Congress reinforces the need for states to pass a lifesaving law by invoking sanctions, states consistently and promptly enact those life-saving laws. *It is important to point out that no state has ever lost a single dollar of Federal highway funds as a result of a Federal sanction.*

In the 1980s, for example, Americans lacked a uniform law across all 50 states that set a minimum drinking age of 21 to eliminate the “blood borders” problem. The differences in drinking age laws resulted in young drivers from states with a minimum drinking age of 21 driving to adjacent states that had a lower legal drinking age, consuming alcohol, and then driving home while under the influence. This resulted in the deaths of tens of thousands of teen drivers and young passengers, earning these areas the designation, “blood borders.” In 1984, because of the leadership of Sen. Lautenberg (D-NJ), Congress enacted the Uniform Drinking Age Act,<sup>28</sup> which required states to enact a minimum age 21 law for the purchase and use of alcoholic beverages or face a potential decrease in Federal highway funds.<sup>29</sup> The law was also championed by then-Secretary of Transportation, Elizabeth Dole, and signed into law by President Ronald Reagan. Within 3 years, the District of Columbia and the 28 states that lacked an age 21 minimum drinking age law met the Federal standard. Since the enactment of the Uniform Drinking Age Act the overall alcohol-related traffic fatality rate has been reduced by half,<sup>30</sup> and NHTSA estimates that 27,052 lives have been saved as a result.<sup>31</sup>

Similarly, in the Commercial Motor Vehicle Safety Act of 1986,<sup>32</sup> Congress included a sanction to encourage states to pass a law requiring specific criteria for the testing and licensing of commercial drivers.<sup>33</sup> This provision was authored by the Senate Commerce, Science and Transportation Committee. By 1992, every state had passed a law requiring the testing and licensing standards outlined by the Secretary of Transportation.

In another example, 26 states lacked a zero tolerance law to better enforce the age 21 drinking law. Congress responded by including in the 1995 National Highway Systems Designation Act, a provision authored by the late Senator Robert Byrd (D-WV), requiring a portion of Federal highway funds be withheld from states that failed to enact a zero tolerance law for young drivers.<sup>34</sup> By 1998, every state and the District of Columbia had passed a zero tolerance law.

<sup>27</sup> Surface Transportation Authorization Act of 2009, § 1516, Enforcement of Primary Seat Belt Laws, and § 1517, Use of Ignition Interlock Devices to Prevent Repeat Intoxicated Driving, Transportation and Infrastructure Committee, markup draft, House of Representatives [Committee Print] (June, 2009).

<sup>28</sup> Pub. L. 98–363 (July 17, 1984), *codified as* National Minimum Drinking Age, 23 U.S.C. § 158.

<sup>29</sup> *Determine Why There Are Fewer Young Alcohol-Impaired Drivers, What caused the decrease?*, DOT HS 809 348. NHTSA (1998), available at [http://www.nhtsa.dot.gov/people/injury/research/FewerYoungDrivers/iv\\_what\\_caused.htm](http://www.nhtsa.dot.gov/people/injury/research/FewerYoungDrivers/iv_what_caused.htm).

<sup>30</sup> *Statistical Analysis of Alcohol-Related Driving Trends, 1982–2005*, DOT HS 810 942. NHTSA (2008), available at <http://www.nhtsa.gov/staticfiles/DOT/NHTSA/NCSA/Content/Reports/2008/810942.pdf>.

<sup>31</sup> *Young Drivers. Traffic Safety Facts 2008*, DOT HS 811 169, NHTSA (2009), available at <http://www-nrd.nhtsa.dot.gov/Pubs/811169.PDF>.

<sup>32</sup> Title XII, Pub. L. 99–570 (Oct. 27, 1986), *codified as* 49 U.S.C. §§ 31301 *et seq.*

<sup>33</sup> The Commercial Motor Vehicle Safety Act of 1986 and Classified Driver Licensing. Transportation Research Board Publications Index, Accession Number 00475965, 1988, p. 14, available at <http://pubsindex.trb.org/view.aspx?id=286034>.

<sup>34</sup> Title III, § 320, Pub. L. 104–59 (Nov. 28, 1995), *codified as* 23 U.S.C. § 161.

The experience enacting a uniform drunk driving threshold is also instructive. In 1998, Congress initially tried using incentive grants to encourage states to pass .08 blood alcohol concentration (BAC) limits. After several years, only 2 states and the District of Columbia had passed .08 percent BAC laws. Finally, in the Department of Transportation Appropriations Act for Fiscal Year 2001, Congress required the remaining states without .08 BAC laws to enact the law lose a portion of their highway funds.<sup>35</sup> Ten states passed .08 BAC laws within the first year after the sanction was applied and, by 2005, all 33 states that lacked a .08 BAC law had adopted the law.

These facts illustrate that the use of sanctions by Congress to prompt states to enact lifesaving laws has been universally effective. Not only have the states enacted these safety laws in a timely fashion, but not one state has lost any Federal highway funds, and thousands upon thousands of lives have been saved as a result. As important, there is a heavy price to be paid for the failure of states to adopt these life-saving laws. According to NHTSA, while many lives have been saved by seat belt and motorcycle helmet use over the years, an equal or greater number of lives could have been saved (but were not) because of the failure of vehicle occupants and motorcycle riders to take basic precautions.<sup>36</sup> The failure of states to enact these safety policies as state law has been a major contributing factor in these losses.

#### **Five Laws That Will Make American Families Safer**

The opportunities to improve traffic safety are many. This testimony addresses five (5) critical safety measures that Congress should pass that will protect every family in every state. These opportunities will save thousands of lives and, in some cases, include incentive grants coupled with sanctions to accelerate state adoption of uniform traffic safety laws that require:

- optimal graduated driver license requirements for teenage drivers;
- primary enforcement seat belt use laws;
- alcohol ignition interlock technology for convicted drunk and drugged drivers;
- ban on the use of distracting electronic devices while driving; and
- all-rider motorcycle helmet use.

#### **Teenage Driving Safety—Strong, Comprehensive Graduated Driver Licensing (GDL) Laws Save Lives**

Motor vehicle crashes remain the leading cause of death for teenagers between 15 and 20 years of age.<sup>37</sup> The number and percentage of young licensed drivers in the U.S. population has increased from 12.6 million (4.8 percent) in 1997, to 13.2 million (6.4 percent) in 2007.<sup>38</sup> The teen driver population will continue to increase as the current cohort of 12- to 19-year-olds expands to 34.9 million this year, increasing the pool of those eligible to obtain drivers licenses.<sup>39</sup> Young drivers also represented 14 percent of all drivers involved in police-reported crashes in 2008.<sup>40</sup>

Although in 2008 there was a notable 23 percent decline in fatalities among 16 to 20 year old vehicle occupants,<sup>41</sup> 16 to 20 year olds still comprised 13 percent of all occupant fatalities,<sup>42</sup> and young drivers remain over-represented in terms of motor vehicle crashes. In 2009, 2,336 drivers, ages 15 to 20 years old, were involved in fatal crashes, involving a total of 5,623 fatalities, including their passengers, pe-

<sup>35</sup>Title III, §351, Pub. L. 106-346 (Oct. 23, 2000), *codified as* 23 U.S.C. §163. See .08 BAC illegal *per se* level, Traffic Safety Facts, vol. 2 No. 1, NHTSA (March 2004), available at <http://www.nhtsa.dot.gov/People/injury/New-fact-sheet03/fact-sheets04/Laws-08BAC.pdf>.

<sup>36</sup>According to the NHTSA, in the 35 year period from 1975 to 2008 child restraints saved 8,959 children, frontal air bags (in use general use since the late 1980s but not universally mandated until the mid-1990s) saved 27,840 occupants, and the 21-Year-Old Drinking Age law saved 27,052 people. NHTSA estimates that while seat belt use saved 255,115 occupants, they could have saved an additional 359,845 people if all occupants had used seat belts. Likewise, while motorcycle helmet use saved 30,495 lives over the 35 year period, another 27,433 lives could have been saved if all riders had worn protective helmets. *Traffic Safety Facts 2008*, DOT HS 811 170, Final Edition, Back Cover, NHTSA (2009).

<sup>37</sup>*Young Drivers*, Traffic Safety Facts 2008, at 1, DOT HS 811 169 (2009).

<sup>38</sup>*Id.*

<sup>39</sup>U.S. Bureau of the Census (1999).

<sup>40</sup>*Young Drivers* at 2.

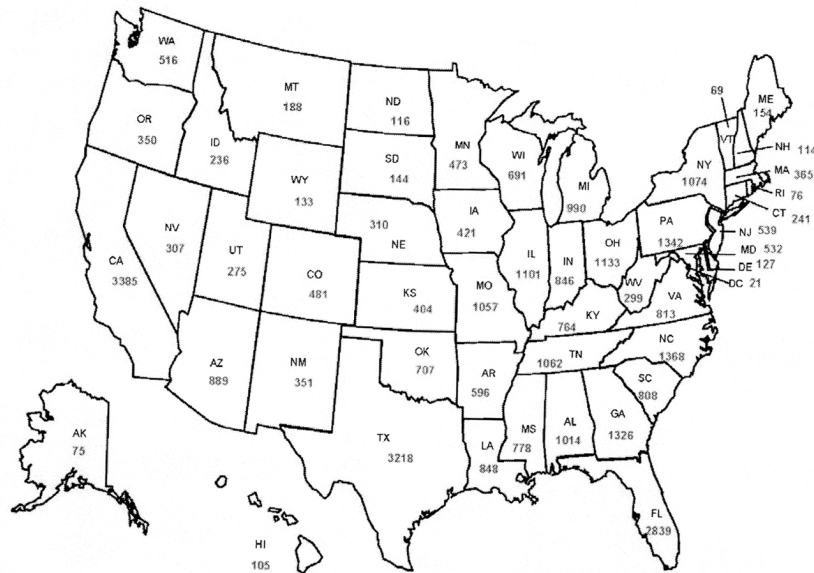
<sup>41</sup>Significant Decline Report, p. 8.

<sup>42</sup>*Id.*

destrians and the drivers and occupants of other vehicles.<sup>43</sup> Young drivers comprise about 12 percent of all drivers who are involved in fatal crashes.<sup>44</sup>

Over the past 5 years, from 2005 through 2009, a staggering total of 36,071 fatalities have occurred in motor vehicle crashes involving teen drivers nationwide. The map on the next page indicates the cumulative number of deaths in crashes involving teen drivers by state. More than half of those deaths, 19,826, have occurred in the 24 states represented by Members on the Commerce, Science and Transportation Committee.<sup>45</sup> This makes a strong case for the need to protect teen drivers in a uniform manner, from state-to-state, regardless of where novice drivers learn to drive.

### FATALITIES IN MOTOR VEHICLE CRASHES INVOLVING TEEN DRIVERS 2005-2009 based on NHTSA FARS Data



Fortunately, there is a proven method for reducing teen driving deaths. Graduated driver license (GDL) laws phase-in driving privileges over time and in low risk circumstances. This allows teen drivers to be introduced slowly to driving and to obtain driving experience under safer conditions. Research has shown the effectiveness of state GDL programs in reducing teen driver crashes and teenage fatalities. A recent study evaluating New Jersey's unique combination of a higher licensing age and a strong GDL system applicable to all novice drivers shows that after GDL implementation, there were significant reductions in the crash rates of 17-year-olds in all reported crashes (16 percent), injury crashes (14 percent) and fatal crashes (25 percent).<sup>46</sup> In Illinois, there has been a dramatic drop—more than 50 percent—in teen-related fatalities since their comprehensive GDL program took ef-

<sup>43</sup>Fatalities in Crashes Involving a Young Driver (Ages 15–20), by State and Fatality Type, FARS 2009, NHTSA. Data provided in response to NHTSA search request.

<sup>44</sup>*Young Drivers*, Traffic Safety Facts 2008 at 1.

<sup>45</sup>The state-by-state breakdown of deaths in teen driver fatal crash from 2005 to 2009 for states represented on the Senate Commerce, Science, and Transportation Committee is: AK (75); AR (596); CA (3,385); FL (2,839); GA (1,326); HI (105); KS (404); LA (848); MA (365); ME (154); MN (473); MO (1,057); MS (778); ND (116); NE (310); NJ (539); NM (351); NV (307); SC (808); SD (144); TX (3,218); VA (813); WA (516); and, WV (299).

<sup>46</sup>Williams, *et al.*, *Evaluation of New Jersey's Graduated Driver Licensing Program*, Traffic Injury Prevention 11:1–7 (Feb. 2010).

fect in January 2008.<sup>47</sup> Even factoring in fewer fatalities due to reduced exposure in an economic downturn, Illinois' strong set of GDL laws undoubtedly played a significant role in this successful outcome.

Advocates recommends five components for an optimal GDL law based on the National Transportation Safety Board (NTSB) recommendations, extensive research conducted on the effectiveness of strong GDL laws, and policies supported by the American Academy of Pediatrics and other public health and safety organizations:

- minimum age limit of 16 years to obtain a learners permit, and age 18 for lifting all restrictions for newly licensed drivers;
- minimum six-month holding period for a learners permit and intermediate stage;
- ban on non-emergency use of cell phone and other communication devices during learners permit and intermediate stage;
- restriction on unsupervised nighttime driving in learners and intermediate stage;
- restriction on more than one non-familial teenage passenger in intermediate stage.

Despite the proven safety effectiveness of GDL laws that meet these optimal features, there remains a patchwork quilt of teen driving laws in states across the Nation. Some states have weak laws while others have stronger laws creating another example of "blood borders." As a result, millions of novice teen drivers lack some of the most basic protections that could prevent teen crashes and save lives. It is time for Congress to act in this public health crisis to encourage state adoption of comprehensive GDL laws.

Legislation that would accomplish this has already been introduced in Congress, S. 3269, the Safe Teen And Novice Driver Uniform Protection (STANDUP Act) sponsored by Senators Gillibrand (D-NY), Dodd (D-CT), Klobuchar (D-MN), Carper (D-DE), Cardin (D-MD), Lieberman (D-CT) and Whitehouse (D-RI). The House has introduced a companion measure, H.R. 1895, with twenty-one co-sponsors including Representatives Bishop (D-NY), Castle (R-DE) and Van Hollen (D-MD). The legislation requires states to adopt the optimal GDL features mentioned above. The bill allows the Secretary of Transportation to consider additional requirements, such as minimum hours of behind-the-wheel driving time and driver training courses, before full licensure is granted. The bill also provides for \$25 million per year for 3 years as incentive grants to entice states to adopt these laws. Furthermore, the bill includes a potential sanction on Federal-aid highway funds to ensure that when all is said and done, uniform state GDL laws across the Nation will save the lives of our most precious possession—our children. This legislation is supported by the Saferoads4teens Coalition<sup>48</sup> whose members include more than 150 national, state and local groups representing teens and parents, consumer, health, and safety interests, emergency doctors and nurses, the American Academy of Pediatrics, Mothers Against Drunk Driving (MADD), firefighters, law enforcement, insurance companies and the auto industry. This legislation, when passed, has the potential to significantly reduce teen crashes, deaths and injuries similar to the safety gains made in saving teen lives with enactment of the National Minimum Drinking Age.

### **Buckling Up—Primary Enforcement Seat Belt Laws Save Lives**

Seat belts remain the most effective occupant protection safety device in motor vehicles. Research shows that when lap/shoulder seat belts are used they reduce the risk of fatal injury by 45 percent, and the risk of moderate-to-critical injuries by 50 percent to front-seat occupants in passenger vehicles. Additionally, seat belts reduce the risk of fatal injury by 60 percent, and the risk of moderate-to-critical injuries by 65 percent, for occupants of light trucks.<sup>49</sup> Yet, in 2008, more than half of the occupants killed in fatal crashes, 55 percent, were unrestrained in crashes where restraint use was known.<sup>50</sup>

Seat belts save lives by keeping occupants in the vehicle, thus preventing complete ejection in a crash. Ejection from the vehicle is one of the most serious and deadly events that can occur in a crash. In fatal crashes in 2008, 77 percent of occu-

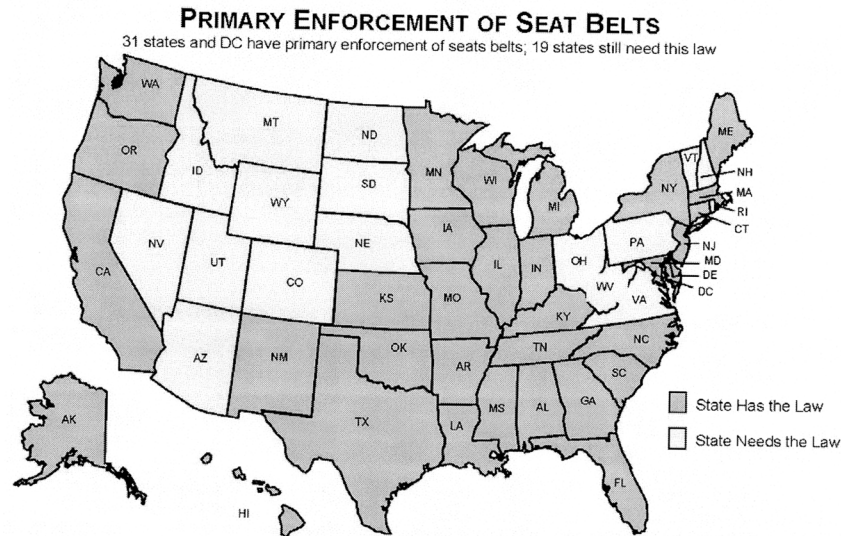
<sup>47</sup>Information provided by the Office of the Illinois Secretary of State, available at [www.cyberdriveillinois.com/press/2009/january/090128d1.html](http://www.cyberdriveillinois.com/press/2009/january/090128d1.html), and from the Illinois Department of Transportation, available at <http://www.dot.il.gov/press/r040709.html>.

<sup>48</sup>[www.saferoads4teens.org](http://www.saferoads4teens.org).

<sup>49</sup>*Occupant Protection*, Traffic Safety Facts 2008, at 3, DOT HS 811 160, NHTSA (2009).

<sup>50</sup>*Id.* at 2.

pants who were totally ejected from the vehicle were killed.<sup>51</sup> Nevertheless, the national observed seat belt use rate was 84 percent in 2009,<sup>52</sup> and only 31 states and the District of Columbia have enacted primary enforcement seat belt use laws, while 19 states have not.



In states with primary enforcement laws, belt use is higher. A study conducted by the Insurance Institute for Highway Safety (IIHS) found that when states strengthen their laws from secondary enforcement to primary, driver death rates decline by an estimated 7 percent.<sup>53</sup> Use levels are typically 10 to 15 percentage points higher in these states than in states without primary enforcement laws.<sup>54</sup> Needless deaths and injuries that result from a lack of seat belt use cost society an estimated \$26 billion annually in medical care, lost productivity, and other injury-related costs.<sup>55</sup>

NHTSA estimates that in 2008, seat belts saved 13,250 lives among passenger vehicle occupants over age 4.<sup>56</sup> If all passenger occupants over age 4 had worn seat belts in 2008 an estimated 17,402 lives, or an additional 4,152 lives, could have been saved.<sup>57</sup> NHTSA calculates that between 1975 and 2008 seat belts saved an estimated total of more than 255,000 lives.<sup>58</sup> Had seat belt use rates been 100 percent over the years, more than 350,000 additional lives would have been saved.<sup>59</sup>

Congress has already tried to persuade states to adopt primary seat belt enforcement laws with a generous grant program. As mentioned, the 2005 SAFETEA-LU Act provided \$500 million in incentive grant funding to entice states to pass primary enforcement seat belt laws. In the 5 years that incentive program was in effect, only ten (10) states enacted primary seat belt enforcement laws and 19 states still have not.

Incentive grants must be coupled with potential sanctions in order to boost the national seat belt use rate and to save thousands more lives each year. That is why Advocates supports the measure adopted by the House Transportation and Infra-

<sup>51</sup>*Id.* at 3.

<sup>52</sup>*Seat Belt Use in 2009—Use Rates in the States and Territories*, Traffic Safety Facts, Crash Stats, DOT HS 811 324, NHTSA (May 2010).

<sup>53</sup>Farmer, C. M. & Williams, A. F., *Effect on Fatality Risk of Changing from Secondary to Primary Seat Belt Enforcement*, Insurance Institute for Highway Safety (Dec. 2004), available at <http://www.gahighwaysafety.org/pdf/ihsseatbeltsof.pdf>.

<sup>54</sup>*Strengthening Safety Belt Use Laws—Increase Belt Use, Decrease Crash Fatalities and Injuries*, Traffic Safety Facts, Laws, NHTSA (Apr. 2004).

<sup>55</sup>*The Economic Impact of Motor Vehicle Crashes*, 2000, at 55.

<sup>56</sup>*Occupant Protection*, Traffic Safety Facts 2008, at 3.

<sup>57</sup>*Id.*

<sup>58</sup>*Id.* at 4.

<sup>59</sup>*Traffic Safety Facts 2008, Lives Saved by Restraint Use and 21-Year-Old Minimum Legal Drinking Age Laws Chart*, Inside Back Cover, DOT HS 811 170, NHTSA (2009).

structure Committee to amend existing law to include a potential sanction for states that do not adopt a primary enforcement seat belt use law by September 30, 2012.<sup>60</sup>

**Convicted Drunk Drivers—Alcohol Ignition Interlock Devices Save Lives**

Drinking and driving continues to be a national scourge on our Nation's highways. While a number of measures have successfully reduced the historically high levels of carnage caused by drunk driving back in the 1980s, nearly a third of traffic deaths occur in alcohol involved crashes. Although the total number of alcohol-related crash deaths declined in 2009 to 10,839 people, 7 percent less than in 2008, alcohol involved crashes still accounted for 32 percent of all traffic fatalities.<sup>61</sup> Except for the recent 2008–2009 dip in fatalities during the recession, the annual level of alcohol-involved crash fatalities has not declined significantly in the past 10 years.<sup>62</sup> Previous decreases in fatalities were in large measure due to a wave of enactment of state anti-impaired driving laws, serious enforcement of those laws and educational efforts by MADD and others to raise awareness of the problem. In order to continue to reduce the number of needless alcohol related crash deaths suffered on our highways each year, and to maintain fatality reductions resulting from the recessionary downturn, more must be done to keep impaired drivers off our streets and roads.

One such measure is the required installation of technology to prevent drunk driving recidivism. An effort led by MADD and supported by Advocates is already underway to urge states to adopt a mandatory interlock system to prevent persons convicted of impaired driving, including first time offenders who have been convicted of an impaired driving offense, from starting their vehicle when they are again impaired. A breath alcohol ignition interlock device (IID) is similar to a breathalyzer used by police to determine if a driver has an illegally high BAC level. The IID is linked to a vehicle's ignition system and requires a driver who has previously been convicted of an impaired driving offense to breathe into the device. If the analyzed result exceeds the programmed BAC limit for the driver, the vehicle will not start. But if the alcohol in the driver's system registers below the prohibited limit, the driver can start the vehicle and begin driving.

Today, modern technology is used not just to provide drivers with vital safety information, but also to allow Internet access and entertainment and business communications that can interfere with the driving task. There is no reason that technology should not be used to prevent impaired drivers who have prior convictions for that offense from operating motor vehicles.

Most Americans support this initiative as well. In 2009, a survey conducted by the IIHS found that 84 percent of respondents said that ignition interlock devices for convicted drunk drivers is a good idea.<sup>63</sup>

However, only 13 states have adopted the use of IID technology to prevent first time offenders convicted of impaired driving from repeating the same dangerous behavior at the expense of others. Thirty-seven states and the District of Columbia have yet to adopt this life-saving law.

<sup>60</sup> Surface Transportation Authorization Act of 2009, § 1516, Transportation and Infrastructure Committee, markup draft [Committee Print] (June, 2009).

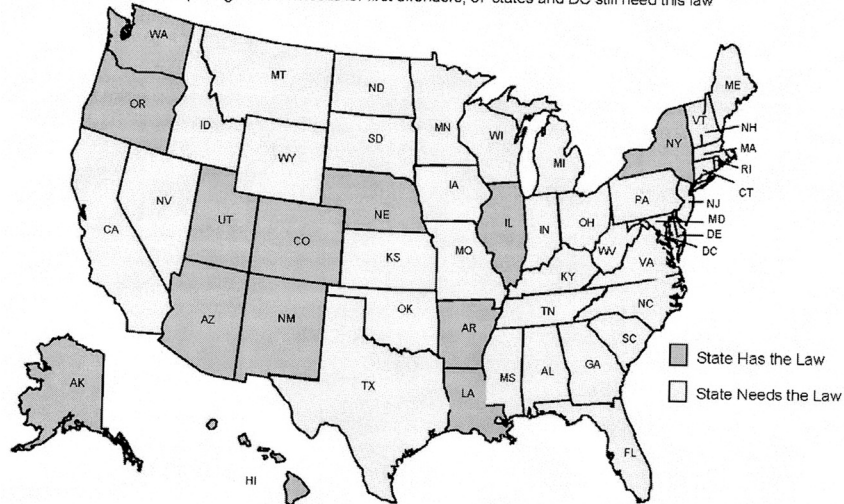
<sup>61</sup> *Highlights of 2009 Motor Vehicle Crashes*, Traffic Safety Facts Research Note, Table 3, p. 2, DOT HS 811 363, NHTSA (Aug. 2010).

<sup>62</sup> *Alcohol-Impaired Driving*, Traffic Safety Facts 2008, at 1, DOT HS 811 155, NHTSA (2009).

<sup>63</sup> 2010 Roadmap Report at 26.

**IGNITION INTERLOCK DEVICES FOR FIRST OFFENDERS**

13 states require ignition interlocks for first offenders; 37 states and DC still need this law



Senator Lautenberg (D-NJ), has introduced the Drunk Driving Repeat Offender Prevention Act of 2009, S. 2920, that advances the cause of safety by requiring all states to adopt IID technology to prevent traffic crashes. The bill includes the tried and true approach of invoking potential sanctions in order to prompt states to enact laws that require the use of IIDs following a conviction for impaired driving. Advocates strongly supports S. 2920 because taking the keys out of the hands of drunk drivers is the most effective action we can take to stop convicted drunk drivers from becoming repeat offenders. And, as previously mentioned, the House Transportation and Infrastructure Committee has adopted this approach in its pending reauthorization bill.<sup>64</sup> Every family deserves to be protected from drunk drivers, and every state should have this law.

**Distraction Driving—Curb the Use of Electronic Devices While Driving to Save Lives**

Although various kinds of distractions have been a part of driving since the automobile was invented, the emergence of personal electronic communications devices that can readily be used while operating a vehicle has presented a whole new category of driver distraction and danger than ever before. The growing use of built-in and after-market or nomadic devices by drivers began with cell phone use but has proliferated through a myriad of personal electronics that allow drivers to access the Internet, perform office work and to send and receive text messages while driving. As a result, in 2009, there were an estimated 5,474 fatalities and 448,000 injuries in crashes where driver distraction was a factor.<sup>65</sup>

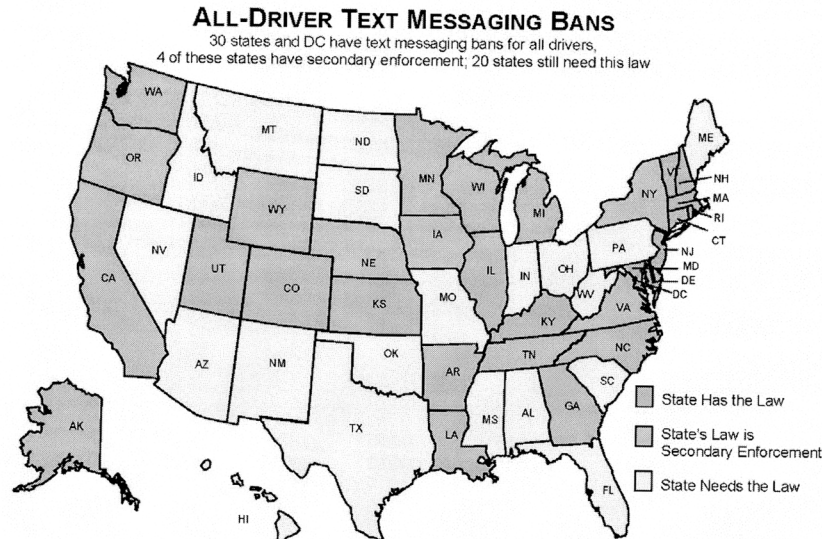
Text messaging while driving poses the most extreme and evident crash risk danger. Diversion of attention from the driving task to input or read a text message clearly interferes with drivers' ability to safely operate a motor vehicle. A 2009 study found that text messaging while driving increases the risk of a safety-critical event by more than 23 times compared to drivers who are focused on the driving task.<sup>66</sup>

A mounting number of research studies and data show that the use of a mobile telephone while driving, whether hand-held or hands-free, is equivalent to driving under the influence of alcohol at the threshold of the legal limit of .08 percent blood alcohol concentration (BAC). Hand-held mobile phone use and dialing while driving require drivers to divert attention from the road and from the driving task, yet

<sup>64</sup> Surface Transportation Authorization Act of 2009, § 1517, see note 25 *supra*.  
<sup>65</sup> *An Examination of Driver Distraction as Recorded in NHTSA Data bases*, Traffic Safety Facts Research Note, at 1, DOT HS 811 216, NHTSA (Sept. 2009).  
<sup>66</sup> Olson, *et al.*, *Driver Distraction in Commercial Motor Vehicle Operations*, Virginia Tech Transportation Institute (2009).

hands-free phone use has also been shown to involve cognitive distraction that is no less dangerous in terms of diverting attention from the driving task and the potential risk of crash involvement.

To date, 30 states and the District of Columbia have enacted all-driver text messaging bans, although 4 of these states have secondary enforcement, but 20 states have no such law.



Two significant pieces of legislation have been introduced in the Senate to prohibit drivers from sending, receiving and accessing text messages while driving passenger vehicles: The Distracted Driving Prevention Act of 2009, S. 1938, introduced by Chairman Rockefeller (D-WV) and the Avoiding Life-Endangering and Reckless Texting by Drivers, or the ALERT Drivers Act, of 2009, S. 1536, introduced by Sen. Schumer (D-NY). Each bill is a strong initiative intended to address distracted driving, and Advocates supports the goals of both bills. We applaud Chairman Rockefeller and Ranking Member Hutchison and the other members of this committee for moving this legislation to the Senate floor on June 9, 2010. Advocates is convinced that a combination of incentive grants and sanctions is the most effective strategy to ensure that text messaging prohibitions are expeditiously adopted in all states.

The Administration has taken some good first steps to reverse the rising tide of crashes that involve distracted driving as a factor. Last week the Secretary of Transportation convened the second national conference on distracted driving,<sup>67</sup> in an effort to keep the focus on this safety problem at the national level. Just after the first such conference<sup>68</sup> President Obama issued a proclamation banning text messaging by Federal employees,<sup>69</sup> and the Department of Transportation (DOT) took measures to curb distracted driving in commercial vehicles.<sup>70</sup> However, the problem of distracted driving in commercial vehicles is not limited only to text messaging. For that reason, Advocates filed a petition for rulemaking with the Federal Motor Carrier Safety Administration (FMCSA), which regulates commercial vehicle operations, seeking a review of all types of electronic devices used in commercial vehicles, not just those that support text messaging.<sup>71</sup>

<sup>67</sup> Distracted Driving Summit, September 21, 2010 (Washington, D.C.), information last accessed on Sept. 20, 2010 and available at <http://www.distraction.gov/2010summit/>.

<sup>68</sup> Distracted Driving Summit, September 30–October 1, 2009 (Washington, D.C.)

<sup>69</sup> *Federal Leadership on Reducing Text Messaging While Driving*, Executive Order No. 13513 (Oct. 1, 2009), 74 FR 51225 (Oct. 6, 2009).

<sup>70</sup> See *Limiting the Use of Wireless Communications Devices*, Final Rule, 75 FR 59118 (Sept. 27, 2010); *Regulatory Guidance Concerning the Applicability of the Federal Motor Carrier Safety Regulations to Texting by Commercial Motor Vehicle Drivers*, Notice of Regulatory Guidance, 75 FR 4305 (Jan. 27, 2010).

<sup>71</sup> *Distracted Driving Petition for Rulemaking: Requesting Issuance of a Rule to Consider Prohibiting or Restricting the Use of Electronic Devices During the Operation of Commercial Motor*



### Motorcycle Deaths—Rose for 11 Straight Years and Helmet Laws are Under Attack

NHTSA estimates that 80 percent of motorcycle crashes injure or kill a rider.<sup>72</sup> 2008 was the 11th straight year in which motorcycle crash fatalities increased, rising to 5,290 motorcyclists killed and 96,000 were injured.<sup>73</sup> This is more than double the motorcycle fatalities in 1998 and a level not seen since 1981.<sup>74</sup> While motorcycle fatalities finally decreased to 4,462 in 2009, that figure still represents fatality numbers that are more than double what the figure was in 1997, the last year in which motorcycle fatalities experienced a decline.<sup>75</sup> While fatality and injury rates for other types of vehicles have dropped over the years, the fatality and injury rates for motorcycles have been steadily rising.<sup>76</sup>

At present, motorcycles make up less than 3 percent of all registered vehicles and only 0.4 percent of all vehicle miles traveled, but motorcyclists accounted for 13 percent of total traffic fatalities and 19 percent of all occupant fatalities.<sup>77</sup> NHTSA estimates that helmets saved the lives of 1,829 motorcyclists in 2008 and that if all motorcyclists had worn helmets, an additional 823 lives could have been saved.<sup>78</sup> NHTSA estimates that 148,000 motorcyclists have been killed in traffic crashes since 1966.<sup>79</sup>

In the past, annual motorcycle rider deaths were much lower in part because most states had all-rider motorcycle helmet laws. Congress used the power of the sanction to require states to enact helmet use laws.<sup>80</sup> When the sanction was repealed by Congress, the states followed suit with more than half the states repealing their helmet laws.<sup>81</sup>

Some motorcycle enthusiasts who oppose motorcycle helmet use laws have asserted that training and education alone are the way to improve motorcycle safety. However, in SAFETEA-LU, Congress included a number of measures aimed at promoting motorcycle training and education. These programs have not proven effective in stemming the increasing tide of motorcycle fatalities. In 2008, motorcycle crash deaths were still on the rise to an all time high of 5,290 deaths<sup>82</sup> despite the SAFETEA-LU funded motorcycle education grant program. The 2009 reduction in motorcycle deaths may well prove to be only a temporary respite due to reduced vehicle miles of travel as a result of the economic downturn.

Today, only 20 states and the District of Columbia require helmet use by all motorcycle riders. The map below indicates the status of the law in each state. This year, 9 of those state laws were under attack by repeal attempts. In 2007, the NTSB recommended that all states without an all-rider helmet law should adopt one.<sup>83</sup> Research conclusively and convincingly shows that all-rider helmet laws save lives and reduce medical costs. While helmets will not prevent crashes from occurring, they have a significant and positive effect on preventing head and brain injuries during crashes. These are the most life-threatening and long-term injuries as well as the most costly.

In 1992, California's all-rider helmet law took effect resulting in a 40 percent drop in its Medicaid costs and total hospital charges for medical treatment of motorcycle riders.<sup>84</sup>

*Vehicles*, dated September 24, 2009, filed by Advocates for Highway and Auto Safety with the FMCSA Administrator.

<sup>72</sup>Motorcycle Safety, National Highway and Traffic Safety Administration, DOT HS 807 709 (Oct. 1999), available at <http://www.nhtsa.dot.gov/people/injury/pedbimot/motorcycle/motosafety.html>.

<sup>73</sup>*Motorcycles*, Traffic Safety Facts 2008, DOT HS 811 159, at 1, NHTSA (2009).

<sup>74</sup>*A Highway Safety Countermeasures Guide for State Highway Safety Offices*, DOT HS 810 891, p. 5–4, NHTSA (3d ed., Jan. 2008) (NHTSA Safety Countermeasures Guide).

<sup>75</sup>*Traffic Safety Facts 2008*, Table 10, p. 28.

<sup>76</sup>*Motorcycles*, Traffic Safety Facts 2008, at 1.

<sup>77</sup>*Highlights of 2009 Motor Vehicle Crashes*, pp. 1 and 3.

<sup>78</sup>*Motorcycles*, Traffic Safety Facts 2008, at 6.

<sup>79</sup>*Id.* at 3.

<sup>80</sup>The National Motor Vehicle and Traffic Safety Act of 1966, Pub. L. 89–563 (Sept. 9, 1966).

<sup>81</sup>See e.g., Evaluation of the Reinstatement of the Helmet Law in Louisiana, DOT HS 810 956, NHTSA (May 2008), available at [http://www.nhtsa.gov/portal/nhtsa\\_static\\_file\\_downloader.jsp?file=/staticfiles/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/810956.pdf](http://www.nhtsa.gov/portal/nhtsa_static_file_downloader.jsp?file=/staticfiles/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/810956.pdf).

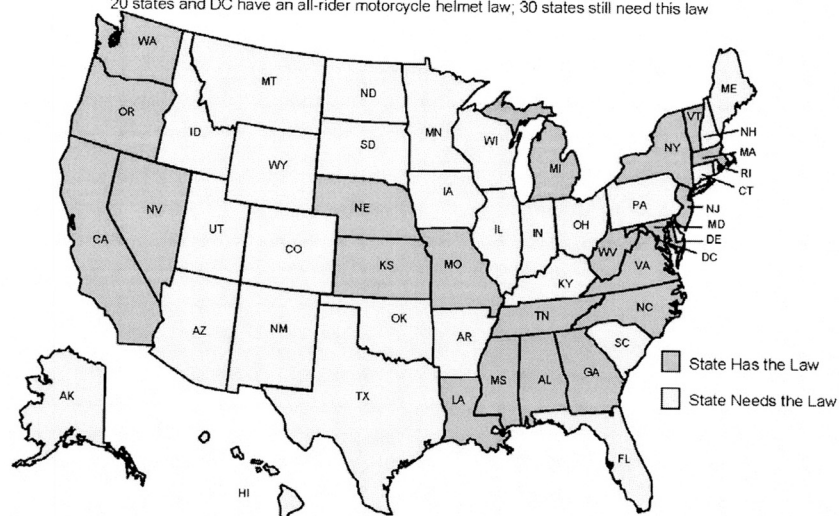
<sup>82</sup>*Traffic Safety Facts 2008*, Table 10, p. 28.

<sup>83</sup>NTSB Recommendations H–07–38, available at [http://www.nts.gov/Recs/letters/2007/H07\\_38.pdf](http://www.nts.gov/Recs/letters/2007/H07_38.pdf), and H–07–39, available at [http://www.nts.gov/Recs/letters/2007/H07\\_39.pdf](http://www.nts.gov/Recs/letters/2007/H07_39.pdf).

<sup>84</sup>*Id.*

### ALL-RIDER MOTORCYCLE HELMET LAWS

20 states and DC have an all-rider motorcycle helmet law, 30 states still need this law



#### Conclusion

The quality of life for all Americans depends on a safe, reliable, economical and environmentally sound surface transportation system. Transportation solutions to promote mobility and the economy must involve not only financial investments, but investments in safety as well. Highway crashes cost our Nation more than \$230 billion annually. This is money that could be better spent on addressing surface transportation needs. Making necessary changes to the performance and effectiveness of the highway safety and incentive grant programs, including requiring the adoption of proven, practical safety laws and policies will dramatically improve traffic safety, reduce deaths and injuries and lower societal costs that accompany motor vehicle crashes.

The significant reduction in highway fatalities that has occurred over the last 2 years affords an opportunity to continue the downward trend and make substantial and lasting reductions in annual fatalities. There are no acceptable excuses for delaying any longer the adoption of lifesaving laws that can help secure these lower fatality levels in the future. Over the course of the next five-year authorization bill we can save thousands of lives each year if we act wisely and act now. If the opportunity slips away without action we could suffer more than 200,000 fatalities and another 10 million injuries in that 5-year timeframe.

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

Senator PRYOR. Thank you.  
Mr. Strassburger.

#### STATEMENT OF ROBERT STRASSBURGER, VICE PRESIDENT, VEHICLE SAFETY AND HARMONIZATION, ALLIANCE OF AUTOMOBILE MANUFACTURERS

Mr. STRASSBURGER. Thank you, Mr. Chairman.

As we've already heard this morning, the Nation recorded its lowest traffic fatality rate last year. And the decline continues in 2010. Some attribute this to the economic downturn, but the fact is, it began well before the downturn started, and it continues even as vehicle miles traveled rebounds.

We are seeing a sustained decline in fatalities because a decade ago, government, industry, and other stakeholders stepped up ef-

forts to reduce traffic fatalities and injuries. And we are now seeing the payoff.

For our part, automakers are waging a safety technology revolution—conceiving, developing and implementing new safety systems with real-world benefits. Still, 33,808 people lost their lives last year on our roads, and about 2.2 million were injured. Tragically, 53 percent of vehicle occupants killed were not restrained by safety belts. Moreover, 32 percent of those killed died because of a drunk driver.

If we are to fully realize the benefits of vehicle safety technologies, we must address drivers' most dangerous behaviors. As this committee moves forward with reauthorization of safety grant programs, we urge you to focus on those that provide the greatest safety benefits.

The Alliance recommends the following:

Primary enforcement safety belt-use laws result in higher usage rates, and that saves lives. The time has come to treat safety belt use with the same seriousness as drunk driving, and sanction States that have failed to adopt a primary law, in the same way the Congress required States to adopt .08 laws. We further urge that funding continue for "Click It or Ticket," NHTSA's high-visibility enforcement campaign for safety belts.

Drunk driving remains one of our most pervasive problems. While we've made progress over the last three decades, that progress pales in comparison to the size of the problem we face. That is why the Alliance is working with MADD to eliminate drunk driving permanently. We support MADD's campaign to eliminate drunk driving, which seeks to mandate the use of a Breathalyzer by anyone convicted of drunk driving, and requests additional funding for research of in-vehicle technologies that could prevent drunk drivers from driving.

We urge the Senate to include the provisions of the DDROP Act and the ROADS SAFE Act in its reauthorization bill. In addition, we urge that funding for the high-visibility enforcement campaign, "Over the Limit, Under Arrest," continue.

Alliance members take concerns about driver distraction very seriously, and we applaud this committee's efforts to raise awareness about the dangers of distracted driving. Digital technology has created a connected culture that forever has changed our society. Automakers are working to manage technology to help drivers keep their eyes on the road and hands on the wheel. But, as we have learned, to be fully effective in addressing a safety problem, we need to supplement automakers' actions with consumer education and strong laws, visibly enforced.

The Alliance supports laws banning hand-held texting and hand-held calling while driving, to accelerate the transition to more advanced, safer ways to communicate. We urge you to include the provisions of the Distracted Driving Prevention Act in the reauthorization bill, and funding for research to better understand driver behaviors, an evaluation of various means to addressing distracted driving.

Obtaining a drivers license is a privilege, and special care should be taken in granting that privilege to new drivers. A recent Insurance Institute for Highway Safety study found that teen graduated

licensing laws rated “good” by the Institute are associated with 30-percent lower fatal crash rate among 15- to 17-year-olds, compared with laws that are rated “poor.” We urge you to include the provisions of the STANDUP Act in the reauthorization bill.

NHTSA and safety researchers need robust data systems to assess current and future safety needs of adults and children. The National Automobile Sampling System, NASS, should be funded at a level sufficient to attain its intended design size. The Alliance recommends that \$40 million annually is needed.

In conclusion, reducing injuries and fatalities from auto crashes is a significant public health challenge. We appreciate the leadership shown by the members of this committee to address these issues, and we share your goals. We look forward to continuing to work with you to make our roads the safest in the world.

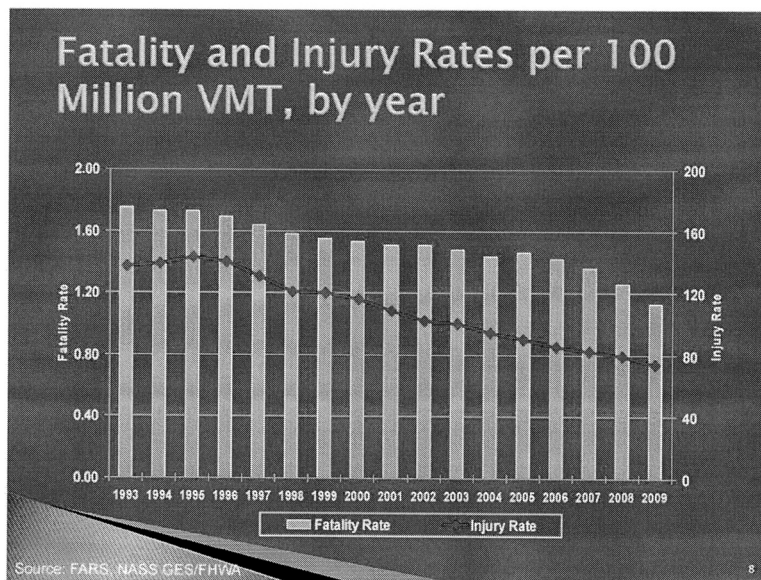
Mr. Chairman, members of the Subcommittee, I’d be happy to answer any questions you may have.

[The prepared statement of Mr. Strassburger follows:]

PREPARED STATEMENT OF ROBERT STRASSBURGER, VICE PRESIDENT, VEHICLE SAFETY AND HARMONIZATION, ALLIANCE OF AUTOMOBILE MANUFACTURERS

Thank you, Mr. Chairman and Subcommittee members. My name is Robert Strassburger and I am Vice President of Vehicle Safety and Harmonization at the Alliance of Automobile Manufacturers (Alliance). The Alliance is a trade association of twelve car and light truck manufacturers including BMW Group, Chrysler LLC, Ford Motor Company, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America and Volvo. Within Alliance membership, safety is a top priority. We operate in a high-tech industry that uses cutting-edge safety technology to put people first.

The latest government facts and figures show that U.S. motorists have never been safer. Just this month, the National Highway Traffic Safety Administration (NHTSA) announced that U.S. traffic fatalities dropped to a record low last year: a 9.7 percent decline from the year before. In 2009, there were 33,808 fatalities in motor vehicle traffic crashes, the lowest fatality number since 1950. 2009 also brought the Nation its lowest fatality rate ever: 1.13 fatalities per 100 million vehicle miles traveled (VMT).



These declines are even more significant in the face of sharp increases in other key factors—more drivers driving greater distances. In the past 60 years, VMT has more than quadrupled and the number of licensed drivers has more than doubled. Vehicle safety technologies combined with consumer education and tough laws combating the most dangerous driver behaviors have provided us sharp declines in critical fatality and injury statistics, all to the benefit of the traveling public.

Nevertheless, we want to continue to reduce the risk of crashes and fatalities even further. Advancing real world motor vehicle safety remains a public health challenge, and automakers are doing our part. Even during the recent economic downturn, the auto industry spent more than \$86 billion globally in R&D in 2008. Most of the safety features on motor vehicles in the U.S.—antilock brakes, stability control, side airbags for head and chest protection, side curtains, pre-crash occupant positioning, lane departure warning, collision avoidance and more, were developed and implemented voluntarily by manufacturers, in advance of any regulatory mandates. The industry is moving forward, engaging in high-tech research and implementation of new safety technologies including autonomous braking systems, vehicle safety communications systems for crash avoidance and much more. Our commitment is to continuously improve motor vehicle safety.

However, we also recognize that vehicle improvements alone cannot get us to where we need to be as a nation. Even last year's historic low fatality figure represents a public health issue that requires us to identify the root causes and focus our collective efforts on the factors that will provide the biggest real world safety benefits. To that end, the single largest cause of fatal crashes is still alcohol-impaired driving. In fact, even though 2009's actual number of alcohol-related fatalities fell slightly, the percentage of fatalities caused by alcohol-impairment actually increased. And while safety belt use levels are at all-time highs, more than half of all people killed in traffic crashes last year were not wearing safety belts.

These are just two examples of why the Alliance aggressively supports tough laws, education programs and high-visibility enforcement to address drivers' most dangerous behaviors. As this Committee prepares for the next authorization of highway safety grant programs, the Alliance recommends focusing precious resources on programs that will provide the most safety benefits: increasing safety belt usage; reducing drunk driving and distracted driving; reducing crashes caused by novice drivers; and ensuring NHTSA's traffic safety database continues to be the world's best.

#### **Increasing Safety Belt Usage**

No industry sector over the past 25 years has devoted more resources to increasing safety belt usage: the automobile industry has spent \$33 million on these efforts between 1996 and 2007 alone. Safety belts are the most effective means immediately available to motorists to keep them safe in crashes. The Alliance is proud of the work we have done with our traffic safety partners to successfully pass primary safety belt enforcement laws in more than 30 states. As soon as possible, that needs to be 50 states.

SAFETEA-LU included the largest incentive grant program in history as a way to encourage states to pass these proven and effective belt laws. Those incentives helped influence elected officials in 12 states to enact primary enforcement laws in recent years. Unfortunately, adoption of these laws also failed by narrow margins in many other states.

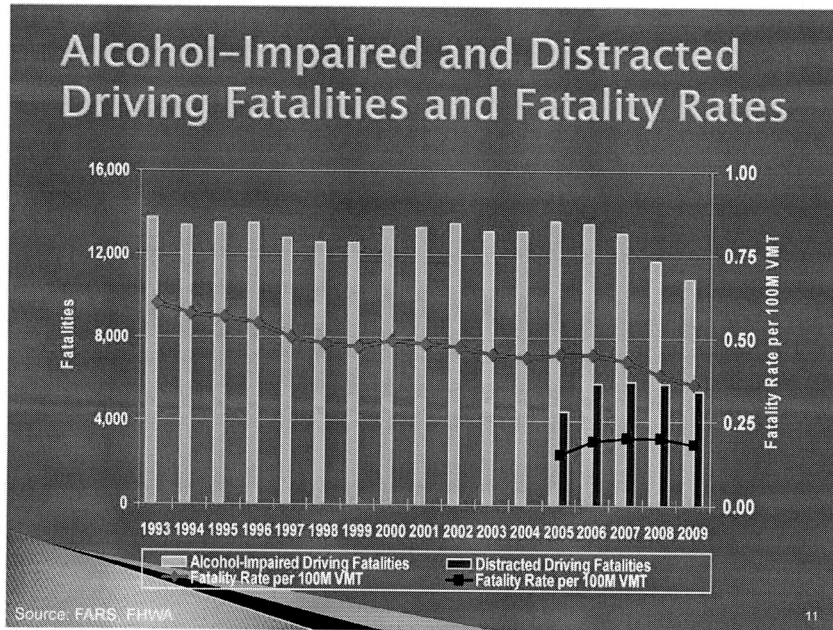
NHTSA's figures show that the total passenger vehicle occupant fatality rate per 100 million VMT is 9 percent higher in non-primary enforcement states than it is for states that have primary enforcement legislation in place. According to the agency, an additional 4,100 lives would have been saved in 2008 (the latest year for which data is available) if all unrestrained passenger vehicle occupants five and older involved in fatal crashes had worn their safety belts.

It has taken a quarter century to get just over half of the states to adopt primary enforcement laws. The Alliance now urges Congress to take the next step and include provisions for withholding a percentage of Highway Trust Fund monies from states that have failed to adopt primary enforcement safety belt laws. And, furthermore, we urge Congress to announce its intention to include such a provision as soon as possible, as this will induce state legislatures to act now.

Sanctions have worked effectively to accelerate the process of passing laws and creating uniform safety policy in all 50 states and in the District of Columbia. Congress employed this tactic to encourage states to adopt a minimum legal drinking age of 21 (1984), zero alcohol tolerance laws for youth under 21 (1995), and 0.08 percent per se blood alcohol content (BAC) laws (2000). It is time to take a similar step with primary enforcement laws.

### Reducing Drunk Driving

Another significant traffic safety concern continues to be impaired driving, which accounts for more than 32 percent of all motor vehicle fatalities. We have made substantial progress in reducing impaired driving in the last two decades, but we must do more.



In November 2006, the Alliance, among others, joined with the U.S. Department of Transportation, the Insurance Institute for Highway Safety (IIHS), the Governors Highway Safety Association, and the International Association of Chiefs of Police, to support MADD's Campaign to Eliminate Drunk Driving. The Campaign is pursuing the adoption of state laws mandating the installation of alcohol ignition interlocks (breathalyzers) on vehicles driven by convicted drunk drivers. New Mexico has become the first state to adopt this mandate, and has benefited by seeing a 30 percent drop in alcohol-involved crashes. Injuries and fatalities are down too, by 32 percent and 22 percent respectively. The bipartisan reauthorization bill introduced in the House by Transportation Committee Chairman Oberstar and Ranking Member Mica included a provision requiring states to adopt mandatory ignition interlocks for convicted offenders as a condition for receiving Section 410 grants. Last December, Senators Lautenberg and Udall introduced similar legislation, the Drunk Driving Repeat Offender Prevention Act (S. 2920). We urge the Senate to include similar provisions in its reauthorization bill.

In addition, in 2008 the Alliance, working through the Automotive Coalition for Traffic Safety (ACTS), joined NHTSA in a five-year, \$10 million cooperative agreement to research in-vehicle alcohol detection technologies that could prevent drivers from even starting a vehicle if their blood alcohol content is at or above 0.08, which is the legal limit. Such technologies hold tremendous promise for keeping alcohol-impaired drivers off the road and reducing their impact on innocent motorists and passengers who lose their lives or are injured in drunk driving crashes. An IIHS analysis reveals that if driver blood alcohol concentrations can be limited to less than 0.08, approximately 9,000 lives might be saved annually. We are pleased to support Senator Udall's legislation, S. 3039, which would aid the funding of this crucial research.

### Reducing Distracted Driving

Alliance members take concerns about driver distraction very seriously, and we applaud this Committee's efforts to raise the awareness about the dangers of distracted driving. While technology has made our world more connected than ever, the ease of connectivity has presented us all with new challenges. Alliance members

prioritize safety in vehicle design, including cutting-edge in-vehicle information systems that allow drivers to keep their hands on the wheel and eyes on the road.

This is why we recommend the Congress adopt the proven three-prong strategy that has worked so effectively in reducing drunk driving and increasing safety belt usage: (1) appropriate laws backed up by high visibility enforcement; (2) increased consumer education; and (3) increased research dollars to further evaluate driver behavior and safety countermeasures.

The Alliance supports state laws banning hand-held texting and hand-held calling while driving, to accelerate the transition to more advanced, safer ways to communicate. The Alliance also supports the use of texting bans like those proposed by Chairman Rockefeller in S. 1938 to combat unsafe behavior, and is working with Congress and other stakeholders to ensure that the legislation passed allows for innovative technologies to be included on the cars of the future to provide consumers with important safety benefits.

We need consumer education so that drivers know that even with the cutting-edge technology found in today's cars—driving distractions remain a risk. Not just hand-held texting and hand-held calling, but eating, drinking, searching for a CD—anything that prolongs a driver's "eyes off road" time presents a risk. This is why the Alliance is proud to partner with leading medical associations in launching a broad, national, multimedia campaign to raise awareness. The OMG Campaign launched this month is a national, multi-media campaign designed to help raise awareness of the dangers of distracted driving.

**GET THE MESSAGE.**  
TEXTING WHILE DRIVING IS A DEADLY DISTRACTION.

**AUTO ALLIANCE**  
DRIVING INNOVATION™

**OIA**

**AAOS**  
AMERICAN ACADEMY OF  
ORTHOPAEDIC SURGEONS

Spread the word, save a friend.  
Visit [aaos.org/donttext](http://aaos.org/donttext), [oia.org/donttext](http://oia.org/donttext)  
and [autoalliance.org/driverfacts](http://autoalliance.org/driverfacts).

And third on the distracted driving front, the Alliance recognizes the need to fund continued research so that we can further understand driver behaviors and evaluate alternative means of addressing the concern. This three-pronged approach has worked for 0.08 BAC limits and "Click It or Ticket" safety belt usage campaigns. It will work here as well.

With regard to increasing safety belt usage and preventing drunk and distracted driving, we also urge the Committee to continue its leadership by providing Federal funding for paid advertising to support high visibility enforcement campaigns, like “Click It or Ticket” and “Over the Limit, Under Arrest.” This advertising is essential to the continuing success of these activities.

#### **Reducing Crashes Caused by Novice Drivers**

Alliance members believe that obtaining a driver’s license is a privilege and, as such, states should take special care in granting that privilege to new drivers. A recent IIHS study found that teen licensing laws rated “good” are associated with a 30 percent lower fatal crash rate among 15–17 year-olds, compared with licensing laws that are rated “poor.” Examples of helpful teen licensing laws include: requiring all occupants to wear safety belts when a teen is behind the wheel; restricting the number of passengers for teenage drivers; prohibiting impaired driving at any level; and prohibiting all portable electronic communication and entertainment devices.

The Alliance supports inclusion of language similar to S. 3269, the STANDUP ACT, co-sponsored by Senator Klobuchar. The STANDUP ACT would establish minimum Federal requirements for state graduated driver licensing (GDL) laws and provide incentive grants for states to adopt GDL laws that meet those minimum requirements within 3 years. After 3 years, those states that have not adopted these GDL laws would be subject to a sanction of their highway funding.

#### **Ensuring NHTSA’s Traffic Safety Database Continues to be the World’s Best**

Lastly, as we work to further improve real world safety through additional advancements in vehicle design, NHTSA and safety researchers must have robust databases upon which to assess current and future safety needs of adults and children. The National Automotive Sampling System (NASS) is an essential nationwide data collection resource that provides the department and safety researchers with detailed motor vehicle crash and injury information. It is operated by the National Center for Statistics and Analysis of NHTSA. NASS—which began in 1979—is a primary resource for identifying traffic safety issues, establishing priorities, assisting in the design of future safety countermeasures and for evaluating existing countermeasures.

The budget for NASS has not kept pace with either the department’s informational needs or inflation. Moreover, these needs are growing as Alliance members reinvent the automobile in response to societal demands for ever safer and cleaner vehicles. The capability of NASS has been dramatically reduced. Currently, NASS collects in-depth data on approximately 4,500 crashes—less than a third of the intended design size of 15,000 to 20,000 crash cases annually. Further, NASS lacks adequate data on children involved in motor vehicle crashes.

NASS should be funded at a level sufficient to attain its intended design size to ensure critical “real-world” data is collected at a sufficient number of sites nationwide to provide the statistically valid, nationally representative sample originally intended. The Alliance also supports enhancing NASS’s capacity to collect sufficient data concerning our most precious cargo—our children. An additionally funded child occupant protection component to NASS is currently in pilot development at NHTSA through industry grants to The Children’s Hospital of Philadelphia. These goals can be accomplished with an incremental \$40 million annual investment in NASS, which equates to \$1.73 cents for every \$100 of economic loss from traffic injuries and fatalities.

Thank you for your consideration of these recommendations, and we look forward to working with this Committee as you move forward in the process.

Senator PRYOR. Thank you.  
Ms. Dean-Mooney?

#### **STATEMENT OF LAURA DEAN-MOONEY, NATIONAL PRESIDENT, MOTHERS AGAINST DRUNK DRIVING (MADD)**

Ms. DEAN-MOONEY. Thank you, Chairman Pryor.

MADD last week celebrated its 30th anniversary with a rally at the Capitol, with hundreds of our volunteers focused on one thing: the elimination of drunk driving.



As you both know, I joined MADD after my husband, Mike Dean, was killed in Texas by a drunk driver going—leaving me to raise our 8-month-old daughter alone.

Mike left a business meeting on November 21, 1991, in Oklahoma, and drove to the Dallas/Fort Worth area to visit his family. At 7:15 p.m. on that Thursday night, a drunk driver met Mike's car head-on, killing him instantly, making me a widow and a single mom. The offender, who also died at the scene, had a blood alcohol concentration of .34 and an empty bottle of whiskey in his car.

For more than 17 years, I have volunteered at—for MADD's mission, at the local, State, and national level, and I will continue this work until no one has to face the loss that I faced due to a drunk driver. Last year, 10,839 real people were killed in alcohol-related crashes; almost one-third of all fatalities.

Additional NHTSA statistics paint a startling portrait of what's happening on our roads. One Arkansas resident holds the record for most DUIs, with 44 convictions. In my home State of Texas, over 120,000 motorists are driving with three or more DUI convictions, and over 18,000 are driving with five or more convictions.

But, fortunately, MADD does have a plan. MADD's campaign to eliminate drunk driving, which, first, supports more resources for high visibility law enforcement; second, requires convicted drunk drivers to install an ignition interlock device; and, lastly, turns cars into the cure, through the development of advanced in-vehicle technology. As you all know, an interlock is a breath-test device that is linked to a vehicle's ignition system. It allows the DUI offender to continue to drive wherever they need to go, they just can't drive drunk.

The research on interlocks is crystal clear and irrefutable. Since New Mexico and Arizona implemented all-offender interlock laws, DUI fatalities in those States have been reduced by 30 and 33 percent, respectively. Every American should be protected by an all-offender interlock law.

MADD is now facing roadblocks from the alcohol industry and DUI defense attorneys as we try to pass this law in State legislatures. We strongly urge the Committee to work with the Senate Environment and Public Works Committee to include an all-offender interlock Federal standard in the reauthorization bill. This lifesaving measure is sound policy.

While interlocks are currently the most proven technology available to stop drunk driving, a program is underway to provide an advanced in-vehicle option for consumers. This technology could potentially eliminate drunk driving. The DADSS system is a result of a research agreement between NHTSA and many of the world's leading auto manufacturers. The purpose of this agreement is to research, develop, and demonstrate non-invasive in-vehicle technologies that can very quickly and accurately measure a driver's BAC. The Insurance Institute for Highway Safety estimates that over 8,000 lives could be saved if this technology is widely deployed in the U.S.

Senator Tom Udall and Senator Bob Corker have introduced bipartisan legislation, the ROADS SAFE Act, which would authorize an addition—\$12 million per year for DADSS. ROADS SAFE has

been included as part of the Motor Vehicle Safety Act in both the House and the Senate.

On behalf of all DUI victims and potential future victims of this violent crime, MADD urges Congress to pass the MVSA this year with an authorization for this program.

Turning to the grant programs, MADD agrees with GHSA, that the program needs to be streamlined. It is also critical that dollars are spent on programs that work. SAFETEA-LU traffic safety grants represent the majority of funds that States spend on drunk-driving prevention. With respect to the impaired-driving grant program, MADD recommends doing away with the qualifying criteria, so that all States automatically receive their funding. But, funding must be spent on activities that can save the most lives, with meaningful performance and activity measures in place to gauge program effectiveness. NHTSA must have the authority to ensure that the States are moving in the right direction.

A series of IG and GAO reports have been released showing what is needed to improve traffic safety grant programs. The IG and the GAO have made several recommendations to NHTSA, including the development of performance measures, in coordination with the States. While NHTSA has since worked with the States to develop performance measures, MADD does not feel that these measures are meaningful enough to fulfill the intent of the IG and the GAO.

MADD appreciates the work of this committee that you've done in the years, directing GAO and the IG to review NHTSA's programs, and in outlining steps that NHTSA can take to improve its oversight functions and the effectiveness of State expenditures. We look forward to working with the Committee to make additional improvements.

To conclude, this committee's leadership is important, and we will eliminate drunk driving. MADD asks the Committee to consider ways to make ignition interlocks part of the next reauthorization bill, and we also thank you for turning cars into the cure for drunk driving by passing the ROADS SAFE Act and implementing the Highway Safety Grant Program changes to ensure that States receive the funding and spend it on activities that will save the most lives and prevent injuries.

Thank you very much.

[The prepared statement of Ms. Dean-Mooney follows:]

PREPARED STATEMENT OF LAURA DEAN-MOONEY, NATIONAL PRESIDENT,  
MOTHERS AGAINST DRUNK DRIVING (MADD)

Thank you, Chairman Pryor and Ranking Member Wicker, for the opportunity to testify before the Subcommittee on Consumer Protection, Product Safety, and Insurance. Your leadership and the leadership of this committee are to be commended as we work to save lives and eliminate drunk driving in our Nation.

Just last week, Mothers Against Drunk Driving (MADD) celebrated its 30th Anniversary with a national conference held here in our Nation's Capital. This past Thursday we held a rally on the Hill, with hundreds of MADD volunteers focused on one thing: the elimination of drunk driving in America.

Since our founding in 1980, drunk driving fatalities have dropped by over 40 percent. We are proud of our successes, but as we reflect on 30 years of advocacy with the goal of saving lives, we must not accept complacency. We all must recommit to saving lives and the elimination of drunk driving. The National Highway Traffic Safety Administration (NHTSA) recently released its fatality analysis reporting system (FARS) statistics. While fatalities are down, there is much more work to be

done. Every one of us should be outraged that 10,839 people, one-third of all highway fatalities, died due to drunk driving.

Over MADD's 30 year history of advocacy, 300,000 lives have been saved since our founding. We have put a face to the crime of drunk driving, sharing story after story of lives cut short due to someone's senseless actions. It is these stories, including my own, that continue to propel our organization forward, moving toward the attainable goal of eliminating this public health epidemic once and for all.

I became involved with MADD after my husband, Mike Dean, was killed in Texas by a drunk driver, leaving me to raise our 8-month-old daughter alone. On November 21, 1991, Mike left a business meeting in Oklahoma and drove to the Dallas-Fort Worth area to visit his family.

At 7:15 p.m., a drunk driver going the wrong way on a Texas highway met Mike's car head on, killing him instantly and simultaneously making me both a grieving widow and a single mom. The offender, who died at the crash scene, had a blood alcohol concentration (BAC) of .34 and was driving with an almost empty bottle of whiskey in his car.

For more than 17 years, I have worked as a volunteer to advance MADD's mission at the local, state, and national level.

Mr. Chairman, we have made great progress in the fight against drunk driving—much of which occurred in the 1980s and through the mid-1990s—thanks to strong laws like the 21 minimum drinking age, administrative license revocation, zero-tolerance for youth, and the national .08 BAC standard. These laws coupled with the equally important efforts of law enforcement, publicized at certain high-risk times of the year through high-visibility crackdown mobilizations, have led to tremendous reductions in fatalities and injuries.

While drunk driving fatalities have decreased, America continues to practice a "catch and release" program: law enforcement does their very best to catch drunk drivers, and we as a society through our legislatures and courts, oftentimes let them go with few consequences.

A couple of statistics collected by the National Highway Traffic Safety Administration (NHTSA) paint a startling portrait of what's happening on our roads.

- One Arkansas resident holds the record for most DUI's with 44 convictions.
- In my home state of Texas, 124,662 motorists are driving with three or more DUI convictions and 18,271 are driving with five or more convictions.

Unfortunately, this type of data is not available for all states.

### **Campaign to Eliminate Drunk Driving**

Fortunately MADD, with support from Members of Congress, NHTSA and others in the highway safety community, has a plan.

Following only those solutions proven to work, MADD announced the Campaign to Eliminate Drunk Driving in November 2006.

The Campaign consists of three parts, all singularly focused on putting a long-overdue end to drunk driving tragedies of our roads:

- *Support the heroes who keep our roads safe.* High-visibility law enforcement catches drunk drivers and discourages others from driving drunk.
- *Require convicted drunk drivers to blow before they go.* Ignition interlock devices, or in-car breathalyzers, require all convicted drunk drivers to prove they are sober before the car will start.
- *Turn cars into the cure.* Tomorrow's cars will protect each of us, automatically determining whether or not the driver is at or above the legal limit of .08 and failing to operate if the driver is impaired.

### **High-Visibility Law Enforcement: A Proven Solution**

Studies show that the combination of paid media ads combined with high visibility law enforcement is proven to deter drunk drivers from getting behind the wheel. MADD advocated authorizing \$29 million per year for NHTSA to conduct three annual mobilization efforts as part of SAFETEA-LU. We thank the Committee for authorizing the program, and we hope to see it continue at even more robust funding levels. *Drunk Driving: Over the Limit, Under Arrest* is conducted twice yearly and *Click it or Ticket* once per year. Both campaigns have been highly effective.

The paid ads target audiences at the highest risk to drive drunk. While the ads are running on television and radio, law enforcement conducts sobriety checkpoints and saturation patrols. Would-be offenders see the advertisements, see law enforcement out in force, and realize that they will be caught if they drive drunk.

MADD recommends that the next reauthorization bill include increased funding for up to 5 yearly crackdowns focusing on drunk driving and seatbelt enforcement.

### **Interlocks Save Lives**

In the past, we as a society have focused on license revocation as the primary countermeasure to drunk driving. If you're caught driving drunk, you'll lose your driver's license. The reality is that 50 to 75 percent of these offenders will continue to drive illegally. In addition, unless you live in an area with accessible mass transit options, you need a car to get to and from work, school, treatment and other everyday destinations.

An alcohol ignition interlock is a breath test device linked to a vehicle's ignition system. When a driver wishes to start their vehicle, they must first blow into the device. The vehicle will not start unless the driver's BAC is below a pre-set standard.

The alcohol ignition interlock allows a DUI offender to continue to drive wherever they need to go. He or she just can't drive drunk and hurt your family or mine.

Studies overwhelmingly show that interlocks work. The Centers for Disease Control (CDC) has reviewed ignition interlocks and has stated that "based on strong evidence of the effectiveness of interlocks in reducing re-arrest rates, the (CDC) Task Force recommended that ignition interlock programs be implemented." In addition to the CDC, there are more than 15 published studies on interlock effectiveness which show that interlocks are associated with substantial and impressive reductions in recidivism, ranging from 50 percent to 90 percent. The evaluations involve a diversity of programs, accounting for the variation in results.

The research on ignition interlocks is crystal clear and irrefutable. Beyond the research, we have fatality data that proves interlocks are effective. In 2005, New Mexico became the first state to require interlocks for all convicted DUI offenders. Since this time, DUI fatalities in the state have been reduced by over 30 percent. Arizona passed a similar law in 2006 and has seen a 33 percent reduction in DUI fatalities.

Today, thanks in part to MADD's campaign, 11 states require all DUI offenders to use an ignition interlock device. Two states highly incentivize DUI offenders to use an interlock and California passed a pilot program requiring all convicted DUI offenders in four counties (with a total population of 14 million people) to use an ignition interlock device.

The population in these states and counties covers over 84 million Americans—a subset of America that is now under the protection of all offender ignition interlock laws.

Every American should be protected by this lifesaving policy. It is the right thing to do be. That is why MADD is calling for a Federal standard which would require interlocks for all convicted DUI offenders. This is the same approach the Congress took with the 21 minimum drinking age law and the .08 per se BAC law. No state has ever lost money as a result of the national standards.

While MADD has made great progress in state advocacy work, we have encountered several roadblocks to progress. Therefore, we must turn to the Congress for help.

An example of this roadblock is in Maryland where an ignition interlock law was considered in a legislature dominated by criminal defense attorneys. The Senate President, Michael Miller, is a DUI defense attorney who, according to his law firm's website "practices in the areas of criminal law, traffic law, DWI and personal injury." Senator Miller worked to amend interlock legislation to remove the interlock penalty for DUI offenders who plead down to a lesser punishment, known as probation before judgment. Roughly half of those arrested for DUI in Maryland will plead to this lesser offense.

In the House of Delegates, the Judiciary Chairman is also a well known DUI defense attorney who routinely amends sound DUI law in favor of significant judicial discretion. The *Washington Post* Editorial Board commented on this fact in a March 30, 2010 editorial which I will submit for the record. It is titled *Maryland Lawmakers Need to Stop Coddling Drunk Drivers*.

Maryland is but one example. The truth is that these patterns exist across the country. The need for a Federal interlock standard could not be more clear.

In the House, Chairman Oberstar and Ranking Member Mica have included just such a standard in their version of the highway reauthorization bill. In the Senate, Senators Lautenberg and Tom Udall have introduced the Drunk Driving Repeat Offender Prevention Act, or DDROP, which mirrors language in the House reauthorization bill by requiring all DUI offenders to use an interlock for at least 6 months.

MADD strongly urges this committee to work with the Senate Environment and Public Works Committee to include an all offender ignition interlock standard in the Senate version of the highway reauthorization bill. The Insurance Institute for

Highway Safety estimates that 1,100 lives could be saved if every state required all drunk drivers to use an ignition interlock device. This is due to specific deterrence. MADD expects that more lives could be saved as New Mexico and Arizona both experienced over 30 percent reductions in DUI fatalities due to general and specific deterrence from widespread use of ignition interlocks.

#### **Advanced Alcohol Detection Technology**

While interlocks are currently the most proven technology available to stop drunk driving, a program is underway which could one day literally eliminate drunk driving. During a 2007 Senate Environment and Public Works hearing, Chairman Barbara Boxer referred to this effort as the "Manhattan Project" for drunk driving.

The Driver Alcohol Detection System for Safety, or DADSS, is the result of a cooperative research agreement currently underway between NHTSA and the Automotive Coalition for Traffic Safety (ACTS), comprised of many of the world's leading auto manufacturers. The agreement is a public-private partnership with both entities providing \$1 million per year for 5 years.

The purpose of this \$10 million agreement is to research, develop, and demonstrate non-invasive in-vehicle alcohol detection technologies that can very quickly and accurately measure a driver's BAC. The Insurance Institute for Highway Safety estimates that over 8,000 lives could be saved if advanced alcohol technology is widely deployed in the United States. These advanced technologies offer the potential for a system that could prevent the vehicle from being driven when the driver's BAC exceeds the legal limit.

Any technology which is developed must be highly accurate, nearly instantaneous, and not hassle the sober driver. If the technology is successful, a sober driver would notice no difference in his or her driving experience. Any technology developed must be set to detect blood alcohol concentrations of .08 or above.

In the first phase of technology development, three companies have been selected through a request for proposal process and testing will be performed in conjunction with the Harvard Medical School. While we are encouraged and hopeful that DADSS will succeed in identifying a technology to one day eliminate drunk driving, we need the help of Congress to guarantee that this technology becomes a reality.

Senator Tom Udall and Senator Bob Corker have introduced bipartisan legislation, the Research of Alcohol Detection Systems for Stopping Alcohol-related Fatalities Everywhere Act, or ROADS SAFE, which would authorize an additional \$12 million per year for DADSS. Many Senators on this Committee are cosponsors of the legislation, and we thank them for their leadership and support. In the House, Representatives Ehlers and Sarbanes have introduced similar legislation.

ROADS SAFE has been included as part of the Motor Vehicle Safety Act (MVSA) in both the House and the Senate. On behalf of all DUI victims, and potential future victims of this violent crime, MADD urges Congress to pass the MVSA this year with an authorization for this program. The additional funding would provide an essential financial boost to the development of this technology, as well as ensure a greater Federal commitment toward eliminating drunk driving.

It is of vital importance that ROADS SAFE be authorized as soon as possible. Every year that we allow drunk drivers to continue to drive on our roads, there are thousands of unnecessary deaths and injuries. MADD urges Congress to provide \$12 million a year to address a problem that costs the United States \$130 billion each year. This is an excellent return on taxpayer investment.

#### **Reevaluating the Highway Safety Grant Formula Program**

MADD looks forward to working with you and your staff to provide specific policy recommendations to strengthen the current highway safety grant programs.

MADD agrees with our friends at the Governors Highway Safety Administration (GHSA) that the highway safety grant program needs to be streamlined. It is logical to combine programs into one large "pot" with funding allocated to those areas of critical importance to highway safety. This allows states to use one application yearly instead of applying for numerous different grants at various times throughout the year. Because funding is limited, it is critical that dollars be spent in key areas such as impaired driving, safety belts and data collection.

MADD would like to offer some particular recommendations toward the impaired driving countermeasure program, commonly known as the 410 program.

First, it is imperative that impaired driving funds be distributed to all states. Taxpayer's pay into the highway trust fund and it is important that this funding go back to the states to be spent on proven impaired driving countermeasures. Currently, the 410 program requires states to meet certain criteria each year in order to qualify for this funding. In addition, the 10 best and 10 worst states automatically receive funding. MADD would like to do away with this current structure.

While well intended, the 410 program creates an unnecessary burden to states in order to receive funds. We do not want to withhold this funding from any state since it serves as such a large portion of all funds spent on impaired driving efforts. What we do want is to make sure that funds are spent wisely and effectively.

MADD recommends that funding be spent on activities that work, and performance and activity measures should be in place to gauge program effectiveness. In the impaired driving category, this means activities like implementation of alcohol ignition interlock programs, law enforcement activities, DUI data collection, and DUI judicial education such as through the Traffic Safety Resource Prosecutor (TSRP) program.

In return for receiving funds, states must create specific, meaningful performance and activity measures that will show progress, or lack thereof, in reducing DUI fatalities year to year. States should be measured against themselves year to year.

MADD also asks the Committee to consider giving NHTSA more authority in working with states as they develop their strategic highway safety plan. In the past, NHTSA had plan approval authority to ensure that states were spending funds effectively. That authority was taken away in the late 1990s, and as a result there have been concerns that NHTSA does not have enough recourse to effectively work with states which are trending in the wrong direction.

Concerns that grew as a result of the removal of NHTSA's plan approval authority led this committee and others to consult with the Office of the Inspector General (OIG) and the Government Accountability Office (GAO). A series of OIG and GAO reports have been released, showing what is needed to improve traffic safety grant programs. Some of these reports focus specifically on impaired driving resources.

In the OIG's Department of Transportation (DOT) FY 2007 Top Management Report, the OIG states that:

"[N]o appreciable improvement in the number of highway fatalities can be achieved until alcohol-related fatalities drop dramatically. States are the linchpin in achieving this drop and ensuring that \$555 million in Federal funding authorized for state alcohol-impaired driving incentive grants are targeted toward strategies that have the most impact."

One of the OIG's recommended actions from the FY07 report was: "Promoting Improved Performance Measures and Enhanced State Accountability to Maximize Efforts to Reduce Fatalities Caused by Impaired Driving." The report goes on to state the following:

"NHTSA—the lead Federal agency responsible for reducing alcohol-impaired driving—could assist in this effort by ensuring that the states include more meaningful measures linked to key program strategies in their performance plans."

While NHTSA has since worked with the states to develop indicators to measure performance in priority program areas, MADD does not feel that these measures are meaningful enough to fulfill the intent of the OIG.

In a March 2007 OIG report titled "Audit of the National Highway Traffic Safety Administration's Alcohol-Impaired Driving Traffic Safety Program" (report #MH-2007-036), the OIG states:

"Officials in NHTSA and the 10 states we reviewed attributed success in combating alcohol-impaired driving to many factors. They agreed that, while other strategies may be important, a successful traffic safety program should include strategies focusing on two key elements: (1) sustained enforcement of laws (to include highly visible police presence and media efforts) and (2) effective prosecution and full application of available sanctions . . . we concluded that NHTSA should do more to measure state implementation of these strategies so that additional funding for countering alcohol-impaired driving is effectively used."

The OIG includes the following table as an example of potential improved performance measures:

Table 3. Benefits From Potential Improved Performance Measures

Strategy	Potential Improved Performance Measure	Potential Benefits for NHTSA if States Used Such Measures
Sustained Enforcement	Accomplish sustained enforcement at a set percentage* of at-risk areas in the state.	NHTSA could better determine the degree to which states were carrying out SAFETEA-LU required assurances to pursue this strategy.

Table 3. Benefits From Potential Improved Performance Measures—Continued

Strategy	Potential Improved Performance Measure	Potential Benefits for NHTSA if States Used Such Measures
Prosecution and Sanctions	Achieve a set percentage* of successful convictions for alcohol-impaired driving offenses.	NHTSA could better determine whether emphasis on sustained enforcement had an impact on alcohol-related fatalities and injuries in at-risk areas. NHTSA could better determine whether specialized training programs for prosecutors had an impact on conviction rates.  NHTSA could better determine the impact of structural change, such as the establishment of courts specializing in alcohol-impaired driving cases.

Source: OIG.

\* Percentage to be determined by NHTSA and the states.

To demonstrate the lack of NHTSA's ability to fully gauge the impact of Federal resources on traffic safety, and the way in which establishing more meaningful performance measures and goals would help, the OIG points out that:

“According to NHTSA, sustained enforcement was defined as ‘at least one enforcement event conducted weekly in areas of a state where 60 percent or more of the alcohol-related fatalities occurred.’ Yet, none of the states included this measure in their annual plans or reports provided to NHTSA . . . Regarding effective prosecution, NHTSA had not yet established a specific measure, although one state did report to a limited extent on improvements in conviction rates for alcohol-impaired driving offenses.”

The GAO has also reviewed NHTSA's programs, highlighting management difficulties in a March 2008 and stating that:

“NHTSA's intermediate outcome measures do not include measures to track behaviors that influence alcohol-related fatalities. Such measures could include the numbers of impaired driving citations issues, arrests, and convictions.”

The OIG and GAO have made several recommendations to NHTSA, including the development of intermediate performance measures in coordination with the states. Since that time, MADD is pleased that NHTSA and the states have moved forward with the development of performance and activity measures. However, the report that resulted from this collaborative effort, in MADD's opinion, has not resulted in the establishment of meaningful performance and activity measures that respond to serious concerns raised by this Committee and the OIG and GAO. The August 2008 NHTSA/DOT report, titled “Traffic Safety Performance Measures for States and Federal Agencies” (DOT HS 811 025) is a starting point, setting forth a “*minimum* set of performance measures” (emphasis added), but does not go far enough.

MADD appreciates the work this Committee has done over the years in directing GAO and the IG to review NHTSA's programs, and outlining steps that NHTSA can take to improve its oversight functions and the effectiveness of state expenditures. We look forward to working with the Committee to make additional improvements, with the ultimate goal of eliminating drunk driving.

MADD has one final recommendation that we would urge the Committee to consider: we believe it would be beneficial to encourage all states to hire a statewide DUI coordinator. This is based on the highly successful model of New Mexico's appointment of a DUI Czar. Drunk driving is an enormous problem that encompasses many jurisdictions: law enforcement, the judiciary, administrative offices, probation, treatment, etc. Often times these jurisdictions do not effectively coordinate and communicate their efforts, making it difficult to have a functional system in place. A DUI coordinator would also bring greater accountability and minimize finger pointing between state agencies. We believe that if every state had a DUI coordinator we would see great improvements in state efforts to combat drunk driving, much like in New Mexico.

### Conclusion

The Campaign to Eliminate Drunk Driving started as a lofty goal in 2006 and has rapidly progressed to being on the verge of reality. In 2006, just 2 million Americans were protected by all offender interlock laws. Today, 84 million people are protected by these laws, but MADD will not stop until interlocks for all offenders becomes the law of the land.

With this Committee's leadership, we will eliminate drunk driving. MADD asks the Committee to consider ways to make alcohol ignition interlocks an important part of the next reauthorization bill.

We also ask for the support of Congress to turn cars into the cure for drunk driving by passing the ROADS SAFE Act.

Finally, by streamlining and revamping the current highway safety formula grant program, we can make changes which will ensure states receive their funding and spend it on activities that will save the most lives and prevent the most injuries.

Thank you to this Committee, and thank you to Chairman Pryor, and Ranking Member Wicker, for holding this important hearing, and for your leadership on this issue.

Senator PRYOR. Thank you.

Mr. Pedersen, can you give your opening statement in, say, 3 to 5 minutes? Is that—

Mr. PEDERSEN. I had certainly—

Senator PRYOR. If that's possible, then I'll stay, and then we'll recess as soon as you finish. Thank you very much.

**STATEMENT OF NEIL PEDERSEN, ADMINISTRATOR,  
MARYLAND STATE HIGHWAY ADMINISTRATION;  
AND REPRESENTATIVE, GOVERNOR'S HIGHWAY SAFETY  
ASSOCIATION (GHSA)**

Mr. PEDERSEN. Thank you, Mr. Chairman.

My name is Neil Pedersen. I'm the Maryland State Highway Administrator, as you said, and also the Governors Highway Safety Representative from Maryland. And I thank you for the opportunity to testify today on behalf of the Governors Highway Safety Association.

Governors Highway Safety Association members administer one formula grant program, seven incentive grant programs, and two penalty transfer fund programs. And, as you heard earlier from Senator Wicker, we're very concerned about the fact that these all have different schedules, they all have been put together in a piecemeal fashion. So, our first recommendation is that there be a national plan developed that takes a more strategic approach toward highway traffic safety. A national plan should be developed under NHTSA's leadership, but working together with State, local, and private-sector input.

We also strongly recommend that there be a single Highway Safety Grant Program, with earmarks for impaired driving, occupant protection, and motorcycle safety, with a single application date at the beginning of the Federal fiscal year, and support, in concept, the approach taken by the House Transportation Infrastructure Committee.

We also would like to spend less of our time on the administrative parts of having to apply for funds, and have more of our time and money be going into, actually, the programs themselves.

We're very much in favor of a performance-based approach. We have worked together with NHTSA on a core set of 15 performance measures. We would like to see the programs really be far more focused on where the performance data is saying we have our biggest problems, and also based on where research is saying that we will have the greatest effect, in terms of where we have invested our dollars, as well.

In terms of specific program changes, we support expanding the purpose and scope of the 2010 Motorcyclist Safety Program, com-



binning the three occupant protection programs into a single, more-performance-based program, and focusing the 410 Impaired Driving Incentive Program and the countermeasures that have been proven to be most effective; that is really letting the data and the research results drive where the money is being spent in the 410 Program itself.

We'd also support authorization of funding to combat aggressive driving and excessive speeding. We believe, today, there is not enough Federal funding focus on the speed problem itself. Speed accounts for approximately one-third of all crashes, yet there are no funds dedicated to combat speed.

We also support funding to encourage States to improve their graduated driver licensing programs. We're very supportive, in concept, of the incentives that Senator Klobuchar has proposed.

GHSA very strongly supports substantially increased funding for data improvements. We believe that that's really the basis for a sound performance-based approach. Today, we do not get nearly enough money, in terms of supporting data programs and data improvements. If we're going to be most effective in a performance-based approach, we really do have to have a sound data basis for the programs themselves.

And finally—and there's more detail in my written testimony—we would really like to see more emphasis on funding both of research and training. Really, today, the key, from my perspective and from GHSA's perspective, is, we should be putting our money where research has told us we'd get the greatest results. In the many, many different programs, only about a third of them really are based on what I would call sound scientific-research basis. And we need to have more money for research telling us where our money should be going.

And as many of the baby-boomers, who are leading the safety efforts, are reaching retirement age, we really have to be training the next generation of safety professionals.

In summary, GHSA has recommended that the current grant planning and application process should be consolidated and streamlined; programs should be more performance-based, with greater flexibility, and some programmatic changes should be made.

And I appreciate the opportunity to testify before you today.

Thank you.

[The prepared statement of Mr. Pedersen follows:]

PREPARED STATEMENT OF NEIL PEDERSEN, ADMINISTRATOR, MARYLAND STATE HIGHWAY ADMINISTRATION; AND REPRESENTATIVE, GOVERNOR'S HIGHWAY SAFETY ASSOCIATION (GHSA)

### **I. Introduction**

Good morning. My name is Neil Pedersen and I am Administrator of the Maryland State Highway Administration and Governor's Highway Safety Representative for Maryland. This morning I am representing the Governors Highway Safety Association. GHSA is a nonprofit association that represents state highway safety agencies. Its members administer Federal behavioral highway safety grant programs that are authorized under Title II of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). They are appointed by their Governors to administer these grant programs and implement statewide highway safety programs. Areas of focus include: impaired driving; occupant protection; speeding and aggressive driving; distracted driving; younger and older drivers; bicy-

cle, motorcycle and pedestrian safety; traffic records and highway safety workforce development.

As you know, traffic-related fatalities and injuries continue to be a major public health problem in this country. Although we have made some progress, there were still more than 33,000 fatalities and 2.2 million injuries in 2009—the last year for which complete statistics are available. Traffic crashes not only cause devastation to families and individuals, but they also cost the Nation an estimated \$230 billion annually. Unfortunately, these crashes happen in one's and two's, so there is little public awareness about them and even less public outcry against them.

To address this problem, the Federal Government must make the reduction of highway fatalities and injuries a national priority and play a strong role in developing highway safety policies and programs. The Federal Government has played such a role since the enactment of the Highway Safety Act of 1966. This Act solidified the Federal leadership position on highway safety while also establishing a partnership with state governments. The Act created the Section 402 State and Community Highway Safety grant program (23 U.S.C. 402) which provided funding to states on a formula basis for developing and implementing state highway safety programs. As the Congress develops the highway safety programs under the next reauthorization, it is important to maintain this strong Federal role. Just as the Federal Government deems it important to prevent tobacco and drug use, underage drinking or obesity, it must also protect the public on the roadways. Without Federal assistance and leadership, especially in these difficult economic times, it is unlikely that states would be able to provide the necessary resources to enhance roadway safety and prevent injuries and fatalities.

## **II. National Strategic Highway Safety Plan**

As noted above, the Federal behavioral highway safety program has grown since the Highway Safety Act was first enacted in 1966. New programs have been added, others dropped. Under the Transportation Equity Act of the 21st Century (TEA-21), five new incentive programs and two penalty transfer programs were added to the existing Section 402 program and the Section 410 (23 U.S.C. 410) impaired driving incentive grant program. Under SAFETEA-LU, four of those incentive programs were dropped and five new incentive programs were added. Since enactment of SAFETEA-LU, two new incentive programs have been proposed: one addressing distracted driving and one supporting teen empowerment programs. Vocal constituencies have pressured Congress to authorize new Federal behavioral incentive grant programs that meet the narrow needs of those constituencies. As a result, the Federal highway safety program has been developed in a piecemeal fashion without an overall plan, resulting in tremendous fragmentation of Federal behavioral highway safety resources at the Federal level and administrative and programmatic difficulties at the state level.

It is time, as the National Surface Transportation and Revenue Policy Study Commission recommended in its 2009 report, to develop a national highway safety strategic plan with national highway safety goals. Other countries, such as Canada and Australia, have developed national strategic highway safety plans that involved all levels of government and the private sector in the development process. Each state has its own Strategic Highway Safety Plans (SHSP), as required by Section 148 of SAFETEA-LU. The missing component is a national plan. *GHSA supports the development of a comprehensive national strategic highway safety plan and recommends that that the next reauthorization bill should call for the creation of such a plan.*

*GHSA also supports a vision of zero highway safety fatalities.* The loss of one life is one too many. Over time, and with education, enforcement, safety infrastructure improvements, vehicle improvements, and technological advances, such an ambitious goal can be achieved.

Further, GHSA supports the interim goal recommended by the American Association of State Highway and Transportation Officials (AASHTO) and others of *halving fatalities by 2030.* This interim goal would require annual reductions of 1,000 fatalities a year. In 2006, the country nearly reduced fatalities by that amount, demonstrating that yearly reductions of this magnitude are possible. Since that time, fatalities have been reduced by more than 1,000 per year, culminating in the most recent reduction of more than 3,000 fatalities in 2009 alone. While the poor economy has played a major role, these reductions cannot be explained solely by the economic downturn. Implementation of effective countermeasures, vehicle and roadway improvements and greater coordination among state agencies involved in highway safety have all contributed to the declines in fatalities. *GHSA recommends that the next reauthorization should support this vision and interim goal and should provide both the resources and the programs to enable achievement of the interim goal.*

GHSA is part of an informal State Highway Safety Alliance comprised of the American Association of Motor Vehicle Administrators (AAMVA), AASHTO, the Association of State and Territorial Health Officials (ASTHO), the Commercial Vehicle Safety Alliance (CVSA), the International Association of Chiefs of Police (IACP) and the National Association of State Emergency Medical Service Officials (NASEMSO) who are participating in the development of a national strategic highway safety plan. These groups have issued a set of principles for the next reauthorization of Federal highway safety programs including behavioral, commercial motor vehicle and safety infrastructure. (Please see attachment).

### III. Performance Measures

The Government Accountability Office (GAO), the U.S. Department of Transportation Inspector General (IG) and the National Surface Transportation Study Commission all recommended the Federal behavioral highway safety programs become more performance-based. In fact, the behavioral programs are already more performance-based than other Federal surface transportation programs. States are currently required to identify their highway safety problems using various data, set annual performance goals for reducing fatalities and injuries, and then report at the end of the year on whether they have reached those goals.

GHSA concurs that the behavioral highway safety programs should be more performance-based and sees that as the next step in enhancing the state planning process. Beginning in 2004, GHSA took steps on its own to enhance state highway safety planning and encourage more performance- and research-based decisionmaking. The Association developed a template for state Highway Safety Plans and Annual Reports that strengthens the goal-setting and reporting processes. In 2006, GHSA, with funding from the National Highway Traffic Safety Administration (NHTSA), produced a report summarizing all the current research on effective highway safety countermeasures. The report, *Countermeasures That Work*, has been updated annually by NHTSA and has been used by states to select research-based, effective countermeasures for their annual Highway Safety Plans.

In 2008, to address the concerns raised by GAO and others, NHTSA and GHSA embarked on a process to identify, by consensus, a common set of performance measures that all levels of government will use in their highway safety planning processes. Currently, there is agreement on ten outcome measures, two behavioral measures and three activity measures. States began to use the first fourteen measures in their FY 2010 Highway Safety Plans (HSP) and year-end Annual Reports (AR) and will continue to do so annually. States have begun to use the 15th measure with their FY 2011 HSPs and ARs and will do so annually (Please see the reports and materials located here: [www.ohsa.org/html/projects/perf\\_msr/index.html](http://www.ohsa.org/html/projects/perf_msr/index.html)). A similar consensus process has been undertaken to identify a common set of performance measures for traffic records systems. *GHSA recommends that if Congress should create a performance-based behavioral highway safety grant program, that it should use the performance measures already developed cooperatively between GHSA and DOT and currently in use by the states.*

For states that are under-performing, the House Transportation and Infrastructure bill proposes that the Department of Transportation should have the authority to reprogram a state's funds. There is already a process for DOT to review a state's performance annually and recommend improvements. This process, known as the Special Management Review (SMR) process, is a collaborative one between the underperforming state and NHTSA's regional office in which the state is located. The decision to reprogram funding could be an adjunct to that process but should be a mutual decision between the state and Federal agency. The House bill also continues but reduces the size of the penalties for states failing to submit an adequate plan that were authorized under the Highway Safety Act of 1966. It is unclear when those penalties would ever be used against an under-performing state if its funds are reprogrammed and a revised HSP is submitted. *GHSA recommends that the penalties should be repealed.*

If Congress concurs that the behavioral highway safety programs should be more performance-based, it *must* provide the resources to states to collect the necessary performance data. The current Section 408 data improvement program (23 U.S.C. 408), which is primarily focused on improvements to crash data systems, is only funded at \$34.5 million a year. The average grant to states is only \$500,000. Improvements to traffic records systems are extremely expensive. Pennsylvania's enhancements to its crash data system, for example, cost the state more than \$10 million. The Federal Government cannot be expected to pay the entire cost of improving state data systems; however, it is clear that funding for the 408 program is woefully inadequate.

Further, states are increasingly funding improvements in the other components of traffic records systems, particularly e-citation systems, DWI information tracking systems and emergency medical services (EMS) information systems. If states are expected to collect performance data such as statewide citation data or more precise injury data, then they need the funding to automate data collection and make other improvements to the data systems that would yield the requisite performance data. *GHSAs urge that the funding for the 408 program should be increased substantially to \$100 million a year. The Association further recommends that no programmatic changes should be made to the Section 408 program.*

Another problem is that there is no uniform definition of serious injuries, so it is difficult to determine improvements in performance on this issue. Most states use an injury measurement scale called KABCO (killed, incapacitating injury, non-incapacitating injury, etc.). The KABCO scale is a measure of the functional injury level of the victim at the crash scene. The codes are selected based on the on-site judgment of the investigating police officer completing the crash report.

However, KABCO is imprecise and relies on overworked law enforcement officials at the scene of a crash to make a determination of the extent of injury. A more precise serious injury surveillance system must be put in place. There is unanimity in the highway safety community that there is a need for greater uniformity in the definition of serious injuries. *GHSAs recommend that NHTSA should be directed to use a portion of its Section 403 Research and Demonstration funding (23 U.S.C. 403) to develop, by consensus, a more accurate definition of serious injuries.*

#### **IV. Program Consolidation**

Another concern is the proliferation of incentive grant programs. The difficulty is that the funding streams are stove-piped, which causes fragmentation and impedes comprehensive, performance-based planning and programmatic implementation. The National Study Commission, the Bipartisan Policy Group, Transportation 4 America and others have all called for greater consolidation of Federal surface transportation programs. It is expected that the Administration's reauthorization bill will include greater consolidation of surface transportation programs.

In the House bill, all of the behavioral grant programs (except the Section 408 data improvement program) are consolidated into a single program with earmarks for impaired driving, occupant protection and motorcycle safety. *GHSAs strongly support the House program consolidation proposal and urge that it should be enacted.*

GHSAs believe that if Congress is pressured by constituent groups to continue separate grant programs, then it must streamline the administration of those programs and give states more flexibility on the use of the funding. Currently, there are different applications and application deadlines for each incentive program. One application is due in February, one in June, three in July, two in August and one in September. Some of the applications are for funding in the current fiscal year, others for funding in the upcoming fiscal year. Half of the incentive funding isn't given out until the end of the fiscal year. States are forced to carry over funding until the next fiscal year, yet they are criticized for having too much carryover money. Such a fragmented approach makes it extremely difficult for states to plan or implement their annual programs effectively.

*Whether there is a consolidated program or not, GHSAs strongly recommend that there should be a single grant application deadline as well as a single application and that all of the grant funding should be allocated on October 1.* We recognize there will be a transition in which states that enact certain qualifying legislation won't receive grant funding until the following Fiscal Year. GHSAs recommend that the current deadlines and applications should continue in the first year of the reauthorization to give the states a chance to get used to a new process. Following that, the single application, deadline and grant allocation should go into effect.

*If separate behavioral highway safety grant programs are authorized, GHSAs strongly recommend that there should be greater flexibility between those programs.* Currently, states have no flexibility to move funding between programs. States should be allowed to flex a portion of their behavioral highway safety grant funds based upon their demonstrated needs. As part of their annual HSP, states are required to submit data indicating their main highway safety problems. This assessment can be used to justify spending more funding in a particular area such as impaired driving, occupant protection or motorcycle safety. It is Congress' interest to ensure that states spend their Federal funding in the areas where it will have the most impact and address the greatest need.

*GHSAs further recommend states should be given the authority to pool a small portion of their highway safety grant funds.* Currently, states are not allowed to pool any NHTSA-administered state grants. When an initiative is undertaken on a regional basis with 402 funds (such as the Smooth Operator aggressive driving pro-

gram in Pennsylvania, Washington, D.C., northern Virginia, and the Maryland suburbs), the participating states must go through a cumbersome process of transferring funds from one jurisdiction to another. A mechanism should be set up to allow states to work together regionally on law enforcement activities or paid media and other educational campaigns. States also should be able to pool funds to support specific highway safety research projects, as is allowed with Federal-aid highway funding. Similarly, a mechanism should be established to allow states to work together on data improvements. Multiple states, for example, may want to fund specific enhancements to software programs jointly used by those states. Or, they may want to hire a data contractor who can serve all the states in a region. There may be substantial savings by allowing states to pool their funds in this manner.

#### V. Program Improvements

The current incentive grant programs have provided needed funding to states to address a range of highway safety issues. However, in at least two of the incentive programs, the eligible uses of incentive funds are too restrictive.

While the Section 410 program has been a valuable tool for enhancing state resources to address drunk driving, some of the 410 criteria have proven too difficult to implement (*e.g.*, the BAC testing requirement), and others (*e.g.*, the self-sufficiency requirement) have not encouraged any state action. GHSA expects that a number of states will fall out of compliance with the program because the requirements are too stringent. This is counterproductive. If the program is continued as a separate categorical grant program, GHSA recommends the program be refocused on those countermeasures that are known to be effective (*e.g.*, high visibility enforcement, DUI courts and judicial education) or have the potential to be extremely effective (*e.g.*, interlocks for first time offenders). GHSA supports the MADD Campaign to Eliminate Drunk Driving. These changes in the 410 program are very much in line with the Campaign and would help to realize the Campaign's goals.

The Section 406 primary seat belt incentive grant program (23 U.S.C. 406) has only been modestly successful. Only a handful of states have enacted primary seat belt laws since the programs' inception. If there is separate funding for occupant protection, GHSA recommends that the 406 program should be combined with the Section 405 program (23 U.S.C. 405) and the Section 2011 child passenger protection program to form a single occupant protection program. Funds should be allocated to states based on a number of criteria such as seat belt use rates, fatality rates of unbelted drivers and primary seat belt and booster seat law enactment. Funding should be used to support a range of occupant protection activities such as high visibility and sustained enforcement, paid media, education programs, seat belt usage surveys, child passenger technician training, child restraint usage surveys, and child passenger protection education and enforcement programs.

States that do not have primary belt laws or very high belt usage do not currently qualify for 406 funds. This has put tremendous pressure on their 402 allocations to fund the annual law enforcement mobilization and paid media. If the 406 program were restructured, it would provide a base of funding for occupant protection activities (including the annual high visibility mobilization) while allowing states to use their 402 funding for other safety purposes.

If the 2010 motorcyclist incentive grant program is continued as a separate grant program, changes need to be made to it. It is also too restrictive and too small to have an impact. As GHSA's recent *Survey of the States: Motorcycle Safety Programs* showed, many states are no longer able to support their motorcycle safety programs based on licensing and training user fees alone. More Federal assistance is needed—funding for the 2010 program should be increased substantially, to \$20 or \$25 million.

NHTSA's National Agenda for Motorcycle Safety (NAMS) has shown that the best way to advance motorcycle safety is to address the problem comprehensively by focusing on such areas as licensing, education and training, protective gear, roadway safety, public information programs on speeding and impairment, conspicuity, enforcement, vehicle improvements, and sharing the road. The current 2010 program prohibits states from addressing the problem of motorcycle safety comprehensively. Eligible states should be allowed to use the funding for additional purposes such as licensing improvements, helmet education and enforcement programs, and impaired motorcycling programs. States should also be required to designate a lead state motorcycle safety agency and prepare a motorcycle safety strategic plan.

GHSA also recommends that there should be a focus on aggressive driving and speed management in the next reauthorization. Speeding is a factor in an estimated one-third of all crashes—a figure that has remained unchanged over the last decade. Speeding costs society an estimated \$40 billion annually. According to the NHTSA-funded 2005 Speed Forum report, "speeding dilutes the effectiveness of other pri-

ority traffic safety programs, including efforts to reduce impaired driving, increase safety belt use, and improve pedestrian and motorcycle safety. Speeding and speed-related crashes occur on all road types, from limited-access divided highways to local streets. Drivers speed in all types of vehicles. Speeding is a local, state, and national problem.” Speeding is one of the three primary factors in fatalities and injuries (along with impairment and failure to wear occupant protection devices) and is a major factor in aggressive driving, yet there are no Federal funds specifically to address the problem.

A 2005 study published by the Transportation Research Board (TRB) found that a 1 percent decrease in travel speed reduces injury crashes by about 2 percent, serious injury crashes by about 3 percent, and fatal crashes by about 4 percent. On a street with an average travel speed of 40 mph, a reduction to 38 mph is a 5 percent decrease. Crashes would be reduced by about 10 percent, serious injury crashes by about 14 percent, and fatal crashes by about 19 percent. Clearly, a small reduction in speeds can have a big impact.

GHSA recommends that states should be encouraged to undertake speed and aggressive driving enforcement, conduct speed management workshops in their states, implement automated speed enforcement programs, or conduct public information campaigns about speeding and aggressive driving. In addition, GHSA recommends Congress fund a national campaign to re-educate the public about the dangerous consequences of speeding and aggressive driving, a biennial national speed monitoring data collection study to determine how fast the traveling public is actually going and research into emerging technological applications for measuring and controlling speed and aggressive driving.

Another area of concern not addressed by SAFETEA-LU is teen driving. Although teen driver fatalities have decreased by 20 percent between 1988 and 2008, teens are still over-represented in fatal crashes. Motor vehicle-related fatalities are the leading cause of death for teenagers, and nearly 3,000 teens were killed in 2008. One of the most effective countermeasures is the graduated driving license law. Forty-nine states (excluding North Dakota) have graduated driver licensing laws. However, some states do not limit (or have high limits) on the number of passengers allowed in the vehicle and have lenient restrictions on nighttime driving. Research has shown that a teen’s risk of crashing increases substantially with each passenger. (That is, with one passenger, the risk is doubled. With two passengers, the risk is quadrupled.) Similarly, research has shown that there is a peak of teen crashes at night. By limiting driving to earlier nighttime hours, the risk of a teen crash is reduced. GHSA recommends that the next reauthorization should address teen driving and provide positive encouragement to states to strengthen the nighttime and passenger restrictions.

A final area not addressed by SAFETEA-LU is distracted driving. According to NHTSA, nearly 6,000 persons were killed in crashes related to driver inattention and distraction in 2008. S. 1938, the Distracted Driving Prevention Act of 2009, would provide incentives to states that satisfy certain eligibility criteria. States must have a hand-held cell phone ban, a texting ban and satisfy a number of other criteria. Eight states are currently potentially eligible for grants. However, none of the states will qualify because the criteria are too stringent. The bill addresses distracted driving as if it were a mature highway safety issue. In fact, it is an emerging issue on which there is relatively little research on the effectiveness of certain countermeasures to address distracted driving. State legislatures are enacting more simple and straightforward legislation than they would if the issue were a more mature one like impaired driving. Hence, the criteria for increasingly stringent penalties and the one for making a crash involving a fatality a criminal penalty are particularly problematic. Further, the criteria to require states to include distracted driving in the driver’s manual and test are not supported by research at all. If anything, research on driver education shows that it is not an effective way to enhance driver safety. In the next reauthorization, these criteria should be examined very closely and adjustments made accordingly.

## **VI. Program Management, Research and Training**

SAFETEA-LU authorized NHTSA to conduct management reviews (MR) of states every 3 years and programmatic management reviews (SMRs) of underperforming states. NHTSA initiated these processes in 2005 and has been reviewing state programs since then.

In 2007, however, GHSA grew concerned about the consistency of the reviews from state-to-state. The Association hired a contractor to review the MR’s and identify areas of inconsistency. In June of 2007, representatives from NHTSA and GHSA met and worked collaboratively to develop a more standardized approach to the MRs. The following year, the contractor undertook a similar review of state SMRs.

Another collaborative meeting was held to develop a more standardized approach to the SMRs. Both NHTSA and GHSA have established their own quality control task forces to review the MRs and SMRs and ensure that the 2007 and 2008 agreements are being followed.

GHSA has also undertaken its own efforts to enhance the management of state highway safety programs. It has developed a monitoring advisory to help states enhance the monitoring of sub-grantees. It has also developed a model Policies and Procedures Manual covering all of the relevant Federal regulations and guidance for Federal behavioral highway safety programs. GHSA's consultant will also begin working on a self-assessment protocol so that state highway safety offices can improve their management practices between Management Reviews.

The Management Reviews and Special Management Reviews have been helpful to states and have identified issues that need to be addressed by the state highway safety offices. The partnership between NHTSA and GHSA has helped ensure that the MR and SMR criteria are applied consistently across the country. *GHSA recommends that the NHTSA oversight requirements should be continued in the next reauthorization unchanged.*

SAFETEA-LU also authorized funding for research under 23 U.S.C. 403. However, the amount of funding devoted solely to behavioral research is small—only \$7.7 million in FY 2011—and partially earmarked for specific research projects. NHTSA's behavioral research budget has remained unchanged for more than a decade. This means that research on the effectiveness of specific highway safety countermeasures can be undertaken only if and when such research reaches the top of NHTSA's priority research list. In fact, the November 2008 National Cooperative Highway Research Program (NCHRP) report on the effectiveness of highway safety programs found that, of 104 behavioral countermeasures, *only 23* had sufficient research with which to be able to determine cost-effectiveness. Without sufficient research to indicate what works and what doesn't, states are forced to implement best practices rather than appropriate research-based programs. *GHSA recommends that NHTSA's behavioral research budget should be substantially increased.*

Training is another area of concern for GHSA. There is tremendous turnover among the Governor's Representatives and Highway Safety Coordinators who run the state highway safety agencies, particularly as baby boomers retire. It is critical that incoming leaders of state highway safety offices and their staffs receive appropriate training so that they can understand the complexities of highway safety and run effective programs. As noted in the TRB Special Report 289, *Building the Road Safety Profession in the Public Sector*, there is an urgent need to improve the training for safety professionals and ensure that it is multi-disciplinary. *GHSA supports dedicated funding for NHTSA training so that the agency can enhance all of its training, including developing distance-based learning.* Further, there is a need for NHTSA to work more closely with the Federal Highway Administration and the Federal Motor Carrier Safety Administration training operations. Presently, there is no process for administering multidisciplinary training such as the Highway Safety 101 course that was developed and pilot tested under an NCHRP grant. As a result, the course, which provides basic training for anyone (not just highway safety offices) involved in highway safety, is languishing. *GHSA recommends that a small amount of funding should be authorized to support a safety training coordination function within DOT.*

GHSA appreciates the opportunity to testify before the Consumer Subcommittee and looks forward to working with the Subcommittee and full Committee on the next surface transportation legislation.

#### ATTACHMENT

#### **Recommendations for the Surface Transportation Reauthorization**

*The undersigned organizations support the following recommendations for the highway safety portions of the next surface transportation reauthorization legislation:*

#### **Establish National Performance Goal and State Targets**

The State Highway Safety Alliance urges Congress to establish a *national* goal of halving motor vehicle fatalities by 2030 and authorize a Federal program that enables state and local governments to attain that goal.

State highway safety-related agencies should set *state performance targets* in their federally-funded highway safety plans that would enable them to move toward attainment of the national goal. The Federal Highway Administration (FHWA), the National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA) should work cooperatively with state safety-related agencies to identify performance measures with which to measure state

progress. At the end of each Federal Fiscal Year, states should report results using agreed-upon performance measures. Rather than penalizing states if they are unable to reach their safety targets within a fixed time period, the Federal safety agencies and their state agency counterparts should cooperatively identify creative strategies for enhancing results at the state level.

#### **Increase Safety Funding**

Although progress has been made in highway safety, almost 34,000 people—more than 90 a day—were killed and 2.2 million were injured in motor vehicle crashes in 2009. Most of these crashes were preventable. Increased funding must be authorized to enable states to reverse these troubling statistics and meet national safety goals and state highway safety targets. The State Highway Safety Alliance urges Congress to increase the level of Federal highway safety program funding commensurate with increases in other core programs. Increased highway safety funding for the grant programs administered by FHWA, NHTSA and FMCSA would enable states to improve safety on the roadways, address hazardous driving behavior and ensure that unsafe commercial motor vehicles are taken off the road.

#### **Streamline Program Administration and Enhance Flexibility**

The Alliance urges Congress to *consolidate* separate categorical highway safety programs to the greatest extent possible. Federal programs should have a single application and application deadline. Congress should identify eligible activities for the consolidated funding, but states should have the *flexibility* to determine how much funding should be used for each eligible activity so that funding is targeted toward the most critical highway safety problems. Requirements on states related to Maintenance of Effort (MOE), if not dispensed with altogether, need to be simplified and made so they incentivize state and local safety activities. They also should be based on activity levels or outputs and not purely on funding.

#### **Strengthen Strategic Highway Safety Planning**

The Strategic Highway Safety Plan (SHSP) requirements of the Sec. 148 Highway Safety Improvement Program have been a positive force for addressing safety in the states. The State Highway Safety Alliance supports those requirements and recommends that they be *strengthened*. States should continue to convene broad committees to oversee the state highway safety planning effort. At a minimum, these committees should consist of representatives of state *and local* agencies responsible for engineering, education, enforcement, emergency medical systems, licensing, and commercial vehicle safety. The SHSP should address highway safety issues on *all public roads*, target funding to areas of highest need as identified by state and local data, and set statewide safety *performance targets*. Any separate federally-funded safety implementation plans (*e.g.*, the Highway Safety Plan, the Commercial Vehicle Safety Plan, the State Transportation Plan) should *support* the SHSP performance targets, and states should *update* their SHSPs at least once during the reauthorization period.

#### **Support Enhanced Data Collection and Analysis**

The collection of performance data is central to the effective functioning of Federal performance-based programs. In order to track and analyze performance, states need to be able to collect more complete, reliable and accurate data, have automated and linked data systems, exploit emerging data collection technologies and utilize better data analysis tools. Data improvements are complex and expensive. Federal funds for these improvements have been inadequate. This is a *priority* for states and the State Highway Safety Alliance urges Congress to fund state data improvements at *significantly higher levels* than current ones.

#### **Increase Investment in Safety Research and Development**

State highway safety programs are stronger and more effective if they are built around *evidence-based strategies*. Research to produce the evidence of countermeasure effectiveness has been difficult because Federal funding for highway safety research is so limited. More countermeasure research is urgently needed. Research is also needed to evaluate emerging safety technologies, demonstrate and evaluate new strategies for reducing highway deaths and injuries, develop model laws and model programs and identify and document best practices. Additional driver and vehicle-related research is needed to enhance the safety of drivers and vehicles and to strengthen Federal regulations. The State Highway Safety Alliance strongly supports *increased funding* for Federal highway safety research.



### Prepare the Safety Workforce for the Future

The highway safety workforce at the state level is aging, and institutional knowledge about highway safety issues and programs will be diminished when the current workforce retires. There have been few efforts to attract young professionals into the field or enhance the professional capabilities of the current workforce. Members of the State Highway Safety Alliance are extremely concerned about this trend and urge Congress to allow states to obligate their highway safety grant funds (those administered by FHWA, NHTSA and FMCSA) for workforce development, training and education with a *100 percent Federal share*. Congress should *more adequately fund* Federal highway safety training for states, and a Center for Highway Safety Excellence should be established to facilitate the development of *innovative safety workforce training* (such as peer-to-peer training programs) and support *better integration* of highway safety training of the three Federal safety agencies.

### Choose Incentives Over Sanctions

The Alliance submits that *incentives are preferable* to sanctions and transfer penalties. Incentives give states the flexibility and resources to find creative, results-oriented solutions that meet safety goals and fit state and local needs. States are currently sanctioned for at least seven different safety-related purposes. An over-reliance on sanctions moves Federal highway safety programs away from a cooperative Federal-state partnership and generates increased state resistance toward the very safety issues that Congress wishes states to address.

NEIL SCHUSTER,  
*President and CEO,*  
AAMVA.

DR. PAUL HALVERSON,  
*President, Director, Division of Health,*  
Arkansas Department of Human  
Services, ASTHO.

VERNON F. BETKEY, JR.,  
*Chairman, Chief, Maryland Highway*  
Safety Office, GHSA.

LARRY L. "BUTCH" BROWN, SR.,  
*President, Executive Director,*  
Mississippi Department of  
Transportation, AASHTO.

FRANCIS (BUZZY) FRANCE,  
*President, Maryland State Police, CVSA.*

MICHAEL J. CARROLL,  
*President, Chief of the West Goshen*  
Township, Pennsylvania, Police  
Department, IACP.

STEVEN L. BLESSING,  
*President, Director, State of Delaware*  
EMS, NASEMSO.

The State Highway Safety Alliance is comprised of the three major recipients of the United States Department of Transportation grants as well as other state-based safety stakeholders.

The Alliance represents state agencies with roles in improving highway safety through infrastructure, driver behavior, licensing, incident response, and enforcement approaches.

The IACP, while not a member of the alliance, shares its goals, concerns, and priorities with respect to these recommendations for the Surface Transportation Reauthorization.

Senator PRYOR. Thank you very much.

We have these two rollcall votes, and if I don't leave here in about 1 minute, I'm going to miss the first one. So, what we'll do is, we'll recess. And my guess is, you know, we're talking about maybe a minute—15 minute recess, something like that.

But, we'll recess, subject to the call of the Chair.

And I want to thank you all for your testimony, and I look forward to the questions.

[Recess.]

Senator PRYOR. I'll go ahead and call us back into order.

I want to again, thank of all our witnesses for their patience, and thank all of the members of the public who are here and watching this for their patience, as well.

Again, I want to thank all of you for your statements and keeping those as brief as you could so that the Committee could run over and vote on the Senate floor.

Mr. Strassburger, let me ask you, if I may—you talked about, in your statement a few minutes ago, that there has been this partnership, or this collaboration, between government and industry, and also other stakeholders. And I think your point is that that collaboration has been effective and we need to try to continue that as best we can.

Let me ask about the design of a vehicle—it's something that Ms. Dean-Mooney mentioned a few minutes ago—where there's now technology that's available, that I guess can be put in cars, that might help with distracted driving, or might help, maybe, you know, with some built-ins on a car, that maybe you could put some things that might prevent drunk drivers from using vehicles. Could you talk about that for a little bit?

Mr. STRASSBURGER. Sure, Senator.

There are a number of technologies, so-called “driver-assist” technologies, that we're developing currently, to help the driver do their primary job better, which is maintaining the safe control of their vehicle. So, some of these technologies include lane departure warning systems, blindspot warning systems, forward-collision warning systems—all of which can help the driver maintain safe control of the vehicle. And one of the other ones, in that same vein, we are also working—and you heard the Administrator talk briefly about it this morning—working with the NHTSA to develop advanced technology that could monitor the blood alcohol concentration of drivers, noninvasively, so that the sober driver would not be hassled.

And that—we are in about the third year of a 5-year program with the agency. We've just received device prototypes that are being tested up at a lab in Boston, and they are undergoing human-subjects testing, as well, with the help of the Harvard Medical School. And they're showing great promise. They would probably not be ready for vehicle integration for another 5 or 7 years, but they are showing tremendous progress.

And I think we have benefited—our research has benefited by the research that's being done for homeland security purposes, to sense or sniff chemical precursors of IEDs or other bad stuff. And once you know how to sniff one chemical, it's just a matter of re-tuning to be able to sniff, in this instance, for alcohol.

So, it shows a lot of great promise; and I think, should it come to fruition, we stand a very good chance of eliminating drunk driving.

Senator PRYOR. Have you—has your organization been working with MADD and other organizations on this?

Mr. STRASSBURGER. Yes, we have. As I testified, we are supporting MADD's campaign to eliminate drunk driving. That campaign is modeled after the “Click It or Ticket” program, which has proven to work, which means—as with any traffic safety problem, we need strong laws, visibly enforced; consumer education about those laws, and the fact that they're being enforced, and how they can protect themselves; and then we need to look at the role of technology. So it's that—the overall package or the comprehensive-

ness of that program that's ultimately going to get us to eliminating drunk driving. And it's important that we do all of it, not just one piece of it.

Senator PRYOR. Ms. Dean-Mooney, has your organization been pleased with the collaboration you've had with the automakers?

Ms. DEAN-MOONEY. Yes, Senator, we absolutely have been. MADD agrees completely with what Mr. Strassburger said, that technology will ultimately be the key to the elimination of drunk driving, and that all pieces have to come together. Behavior modification is certainly a part of that; but, 30 years after we've been in place, people still drive drunk, because they can, and because we tolerate it, as a society. But, we are very pleased to be working with the Auto Alliance.

Senator PRYOR. And you mention, I think, in your statement a few moments ago, that not all industry is supportive of MADD, maybe—I think you said the defense attorney—Criminal Defense Bar and—did you say the alcohol industry? Who all is—who all tends to be in a different place than you?

Ms. DEAN-MOONEY. Well, primarily the public supports our efforts, which is the most important piece. Criminal defense attorneys, and State houses often chair committees that our bills will have to go through, and we hit—have hit roadblocks there, because they choose not to let our bills go forward. The good thing about us is, we continue to come back, we never go away. But, the—certain segments of the alcohol industry will also try to oppose our bills, as they have in the past with .08, as they have with underage drinking laws, as well. But, we will continue to show, through data, through research, that what we speak about, is the facts, and what we believe will happen is the elimination of drunk driving, ultimately.

Senator PRYOR. Yes. Let me ask about that data question. Mr. Pedersen, that's actually one of the questions I had for you. Because I hear, from my folks in Arkansas—and I'm sure other Senators have heard similar things from their States—they—that the issue of data collection is critical, and I—my understanding is, from a State's perspective, or city's perspective, it can be very expensive, as well, to have the right technology and the ability to collect data accurately. What's your view of that, and what's your experience with that?

Mr. PEDERSEN. Absolutely, data is the key, particularly if we want to be moving to a performance basis for the safety programs. It's very expensive to collect data, it's also very expensive to be analyzing and processing the data, as well.

Senator PRYOR. Do you collect it through accident reports—

Mr. PEDERSEN. Yes.

Senator PRYOR.—things like that?

Mr. PEDERSEN. Yes. From police agencies.

Senator PRYOR. Right.

Mr. PEDERSEN. And then the data actually has to be processed, and a lot of quality control has to be going into it. There are a lot of issues that you have to be looking at, in terms of consistency within the data, to be making sure that it is quality data before you can be using it.

But, in the end, serving as a Governors Highway Safety Representative, in an organization that really takes a performance basis seriously, we want to be investing our dollars where we know, first, we have a problem based on what the data is telling us, and second, where the research is telling us we can be making a difference. And the key to good research is good data.

So, it's not just the analysis for the programs at the State level, it's ultimately so that we can be having the research results that ensures that we're investing the dollars most wisely.

Senator PRYOR. Ms. Gillan, I would like to ask you about data, and the accuracy of data and data collection, and how we measure how effective these safety programs are. Did you want to have a comment on that?

Ms. GILLAN. Well, Advocates has—all of the positions that we take on Federal and State legislation is data-driven. And we are concerned about the funding at NHTSA for the collection of data. And I think that this committee did a great job, in the MVSA bill, in really boosting NHTSA's vehicle safety programs, and, in turn, supporting the collection of data for both FARS, which is their annual Fatality Accident Reporting System, and NASS.

Clearly, if we don't give NHTSA the resources to collect that data, then it affects how the States do the programs that they have, and also the programs that Congress has. And I think that everybody on this panel would agree that—I don't think we have done as good a job as we should in collecting that data and getting it out there so that we can make those kind of informed decisions.

Senator PRYOR. And from your standpoint, is that a matter of money and financing better data collection, better technology?

Ms. GILLAN. I think it's both. I think that we need to give the agency the resources. I also think that we need to collect better data, at the State level, on crashes right now. It's very difficult to ascertain, in a police accident report, whether, in fact, there has been some distraction, whether the driver was using a cell phone or was texting. And I think that's contributing to some of this confusion about, you know, Are these laws working?

And the fact of the matter is, Senator, too, a lot of crashes are multifactor crashes, they would involve speed and texting. And so, it has been hard, I think, with the data that we're collecting, to really clearly, sort of, see some of those trends. And we've missed some. I mean, we clearly missed what was happening with Toyota in the sudden acceleration. I think we missed some of the distracted driving, for years—we should have known sooner about what was going on—because of the issue of inadequate data collection.

Senator PRYOR. Mr. Pedersen, let me ask something that you—or follow up on something that you mentioned, which is more of a paperwork issue for the States, and that is kind of going to a single application, or a streamlined process to apply for these grants. How much of an impediment is it for the States to, kind of throughout the year, have applications that come due at different times in the year, and have to, I guess, reapply and reapply—oftentimes, the same information, I assume—but, how much of an impediment is that for the States?

Mr. PEDERSEN. From a perspective of Governors Highway Safety Representative, who really is charged with looking at things more strategically, I'm very frustrated that we're dealing with one program at a time, in terms of the applications that are going in, the decisions that are being made. We really need to be taking a more holistic view of the decisions that we are making, and doing it all at one time, so that we can have one single decision that is being made, regarding resource allocations.

Second, by having many different applications that have to be submitted, you're just increasing the amount of administrative work that goes with it, instead of a single application and dealing with NHTSA one single time. To the extent that we can reduce the amount of money that has to be going to grant administration more resources can be put into the programs, which will result in greater traffic safety.

Senator PRYOR. Let me follow up on one of Senator Klobuchar's questions earlier. It was kind of a carrot-and-stick question. It's a classic question, between State and Federal Government, on, you know, How many incentives should we have, versus, you know, how many sticks should we have, in the process? And I know that States—when I hear from States, they want flexibility, they want, you know, to not be punished if they don't do something. But, where's the balance there? How do we—as policymakers here, how do we set this up to where we find the most effective combination of carrots and sticks?

Mr. PEDERSEN. Well, again, if we take a performance basis, we should have a program that is driven by where the data is telling us we have the greatest problems and where we can get the greatest results. And there should be more of a programmatic review of whether the States are allocating the money where it is most effective.

States have been opposed to sanctions in the past. GHSA is opposed to sanctions. I can tell you, from the perspective of the person who has to appear before the legislative committees to try to convince them to be passing legislation, that we are far more effective in getting legislation passed when we can be demonstrating, through data, that we have a problem, and we can be demonstrating, through research, that there are results, than when I go in and say, "We have to do it, because the Feds will sanction us if we don't do it." All that does is create resentment on the part of the legislative committees at the State level, and they will not be nearly as cooperative, in terms of passing legislation that is actually effective.

Ms. GILLAN. And, Senator Pryor?

Senator PRYOR. Yes—

Ms. GILLAN. I just—let me just augment and give my view, because I do testify before a lot of State legislatures, and—on this issue—and we have many State legislators, for instance, that are supporting the STANDUP Act, with the sanction, because we know that, without that sanction, they won't be able to get that law through.

I have a sister who is a State Senator in Montana. I've been pushing her to try to get a primary enforcement seatbelt law through the Montana State legislature, and she has said to me pri-

vately, and she will say it publicly, “Show me a sanction and I’ll show you that law.”

So, I think that we can start out with incentives, but they’re—clearly, the history of incentives are not working, and we need to go to sanctions, especially for laws on primary enforcement seatbelt law, teens, motorcycle helmets, and drunk driving, where we are not making the progress that we should.

Senator PRYOR. Mr. Strassburger?

Mr. STRASSBURGER. Yes, if I could. I’m—Senator, I’d just take the middle-of-the-road position, here.

The first primary enforcement law that was adopted was in 1984 in the State of New York. Twenty-five years later, after considerable amount of effort by my industry—and investment by my industry—to say nothing of the efforts made by Congress—we’ve just this—passed—or, this year, we got over just half of the States—30. So, clearly, primary enforcement laws are ripe for a sanction.

To start with incentives first, and then move to sanctions, is probably the right balance. There is case law, *South Dakota v. Dole*, that—and I’m not a lawyer, but my novice reading of it is, is that—that case concluded, absolutely, it’s the—within the authority of Congress to withhold funds, so long as they are not punitive. But, the court didn’t give any direction as to what is punitive. So, I’m personally concerned about loading the States up with numerous sanctions all at once, but I think, clearly, we should start with primary enforcement safety belt law, move to drunk driving, and then on to the others, in priority order, as they are, as we see from the data is that—what are our biggest problems.

Senator PRYOR. Ms. Dean-Mooney, let me ask you about one of those laws, the open-container law. It’s in Section 154 of Title 23. How is the open-container provision working out there in the States? My understanding is, there are—I don’t have the number, but not every State has adopted that. And give us your sense of how the open-container law is working.

Ms. DEAN-MOONEY. Well, unfortunately, Senator, we don’t have that data with us, but we’ll be happy to provide it to you for the record.

[The information referred to follows:]

LAURA DEAN-MOONEY, MADD NATIONAL PRESIDENT

**Response to Question Posed by Senator Mark Pryor**

In 1998, as part of the Transportation Equity Act for the 21st Century (TEA-21), a Federal program was established to encourage states to enact laws that prohibit the possession and consumption of alcohol in motor vehicles. Section 154 of Title 23 of the U.S. Code authorizes the transfer of a portion of a State’s Federal-Aid highway construction funds if a state does not comply with program requirements for enacting an open container law.

Each year nearly 11,000 people are killed due to drunk driving, and 350,000 more are injured. A 2002 NHTSA study showed that states without open container laws experienced significantly greater proportions of alcohol-involved fatal crashes than states with open container laws. NHTSA’s national surveys on drinking and driving show that a majority of the public supports open container laws, even in States without such laws.

To comply with Section 154, a State’s open container law must:

- Prohibit both possession of any open alcoholic beverage container and consumption of any alcoholic beverage in a motor vehicle;

- Cover the passenger area of a motor vehicle, including unlocked glove compartments and any other areas of the vehicle that are readily accessible to the driver or passengers while in their seats;
- Apply to all open alcoholic beverage containers and alcoholic beverages, including beer, wine and spirits;
- Apply to all vehicle occupants, except for passengers of vehicles designed and used primarily for the transportation of people for compensation (such as buses, taxi cabs or limousines), or the living quarters of motor homes;
- Apply to all vehicles on a public highway or right of way (*i.e.*, on the shoulder) of a public highway; and
- Require primary enforcement of the law, rather than requiring probable cause that another violation had been committed before allowing enforcement of the open container law.

States that failed to enact a compliant law by FY 2001 and FY 2002 had 1.5 percent of their highway construction funds transferred to either the State's 402 program to be used for impaired driving countermeasures, or the State's Hazard Elimination Program (HEP). The HEP is now referred to as the Highway Safety Improvement Program (HSIP). After FY 2002, the percentage of transferred funds increased to 3 percent.

To date, 39 states and the District of Columbia comply with the law. These states are: Alabama, Arizona, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Washington and Wisconsin.

When the open container standard was enacted in 1998, only 13 states and the District of Columbia had compliant laws. The standard has been effective in encouraging 26 states to enact compliant open container laws, a very strong outcome. But no State has passed an open container law since FY 2006. It is unlikely that the remaining 11 states will come into compliance as a result of the standard. Perhaps one way to strengthen the current program would be to remove the option to transfer funds to the HSIP, instead only allowing funds to be transferred to the 402 program for impaired driving countermeasures.

Senator PRYOR. OK.

But, I think—isn't fair to say that not all states have done open-container laws, but—you know, some have and some haven't, and it's kind of a—my understanding is, it's kind of a mixed result.

Ms. DEAN-MOONEY. That's correct. There is a mixed result. I mean, in Texas, where I live, there are still drive-thru liquor stores, you can pull right up and—although they have an open-container law in Texas, they're still selling by the can—and you can take that in your car, under the assumption that you're not supposed to open it while you're in your vehicle. We have some work to do there.

Senator PRYOR. Right.

Well, really, I have other questions that I may submit for the record, because, again, some of this is detailed, about some of the specific programs and some of your specifics in your testimony. But, I think what I'd like to do is—unless someone has something else to add before we close here, I'd like to go on to the third panel.

So, let me just say thank you very much for your time and participation. I'm sorry we had a vote in the middle of your panel. But, very helpful, and we appreciate you all.

And again, we're going to leave the record open for a couple weeks, and you'll probably get some follow-up questions from the staff or from individual offices on this.

So, thank you very much for being here.

Senator PRYOR. What I'm going to do is go ahead and call up the third panel. And I know that the Committee staff will want to swap out the nameplates and reset the microphones, et cetera, so I'll go ahead and just very briefly mention our three witnesses, and—without giving a lot of background on them, but just very briefly mention them.

First, we have Mr. Ethan Ruby. He's from New York, New York. And second, we will have Mr. Ira Leesfield, he's past President of the Academy of Florida Trial Lawyers. And third, we will have Mr. Thomas M. James, President and CEO of the Truck Renting and Leasing Association.

So, as soon as they get set and all the microphones are set up, we'll turn it over to Mr. Ruby. But, we will—

Before I get started, let me go ahead and say that Senator Hutchison has requested that these letters from International Trucks of Houston and Rush Enterprises—looks like “in San Antonio”—be placed in the record. And so, without objection, I'll do that—am glad to do that.

[The information referred to follows:]

RUSH ENTERPRISES,  
New Braunfels, TX;  
San Antonio, TX, September 22, 2010

Hon. KAY BAILEY HUTCHISON,  
Ranking Member,  
Committee on Commerce, Science, and Transportation,  
Washington, DC.

Dear Ranking Member Hutchison:

I am writing to request your support for the preservation of the Federal law prohibiting states from imposing vicarious liability on owners of rented and leased vehicles, codified at 49 U.S.C. 30106 and commonly known as the Graves Law. I very much appreciate your support for the passage of this law in 2005. Unfortunately, there have already been multiple attempts during this Congress to repeal this common sense law, and turn back the clock to reinstate antiquated vicarious liability laws that hold non-negligent owners of rented and leased vehicles liable for the actions of their customers operating the vehicles.

Preservation of this vicarious liability uniformity law is critical to the success of Texas-based businesses like Rush Enterprises. The constitutionality and preemptive authority of the Graves Law, has been affirmed by the U.S. Court of Appeals and U.S. District Court, as well as the highest courts in several states, including the Minnesota Supreme Court and Florida Supreme Court. Especially in this economy, repeal of the Graves Law could have a devastating impact on both small and large businesses.

Rush Enterprises operates the largest network of heavy- and medium-duty truck dealerships in North America in addition to its truck leasing operations. Rush Enterprises has approximately 2950 employees in 68 locations, and owns approximately 3000 trucks. Some of the businesses who lease trucks from Rush Enterprises include Pepsi/Tropicana, Costco, International Paper, and Boise Cascade.

Rush's leased trucks are being used in interstate commerce throughout the United States. If the Federal vicarious liability uniformity law were to be repealed, it would subject Rush Enterprises to liability for injury and property damage resulting from the actions of negligent drivers solely because we own the trucks. Repealing the Graves Law would immediately restore vicarious liability laws in states such as New York, Maine, Connecticut, Rhode Island, Minnesota, and Florida, and Rush Enterprises would be exposed to liability there even in the absence of any negligence on our part. Even if we are not subject to a lawsuit, the return of vicarious liability laws would lead to an increase in insurance costs, rental and lease costs, and an overall increase in the cost of commercial transportation. Ultimately, it is the consumer who suffers through higher costs of goods throughout the Nation.

I understand that your Committee will be holding a hearing on vicarious liability and the Graves Law on September 28. On behalf of Rush Enterprises, I would greatly appreciate your help in preserving the vicarious liability uniformity law if



the issue of repeal should be brought up in the Senate during the remainder of this Congressional Session. Thank you for your consideration, and please call me if you would like to discuss this issue and its critical importance to my Texas business.

Best regards,

W. MARVIN RUSH,  
*Chairman,*  
Rush Enterprises, Inc.

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INTERNATIONAL TRUCKS OF HOUSTON  
fka OLYMPIC INTERNATIONAL TRUCKS  
*Houston, TX, September 22, 2010*

Hon. KAY BAILEY HUTCHISON,  
Ranking Member,  
Committee on Commerce, Science, and Transportation,  
Washington, DC.

Dear Ranking Member Hutchison:

I am writing to request your support for the preservation of the Federal law prohibiting states from imposing vicarious liability on owners of rented and leased vehicles, codified at 49 U.S.C. 30106 and commonly known as the Graves Law. I very much appreciate your support for the passage of this law in 2005. Unfortunately, there have already been multiple attempts during this Congress to repeal this common sense law, and turn back the clock to reinstate antiquated vicarious liability laws that hold non-negligent owners of rented and leased vehicles liable for the actions of their customers operating the vehicles.

Preservation of this vicarious liability uniformity law is critical to the success of Texas-based businesses like Kyrish Truck Centers, and the leasing business which is part of that network of dealerships, Kyrish Idealease. The constitutionality and preemptive authority of the Graves Law, has been affirmed by the U.S. Court of Appeals and U.S. District Court, as well as the highest courts in several states, including the Minnesota Supreme Court and Florida Supreme Court. Especially in this economy, repeal of the Graves Law could have a devastating impact on both small and large businesses.

Kyrish Truck Centers operates one of the largest networks of heavy- and medium-duty truck dealerships in the U.S. in addition to its truck leasing operations. Kyrish Truck Centers and Kyrish Idealease together have approximately 550 employees in 11 locations, and owns 1857 trucks. Some of the businesses who lease trucks from Kyrish Idealease include food companies, paper companies, furniture companies, building material companies, medical waste companies, chemical companies, beverage companies, floral companies and on and on.

Kyrish Idealease's leased trucks are being used in interstate commerce throughout the United States. If the Federal vicarious liability uniformity law were to be repealed, it would subject Kyrish Idealease to liability for injury and property damage resulting from the actions of negligent drivers solely because we own the trucks. Repealing the Graves Law would immediately restore vicarious liability laws in states such as New York, Maine, Connecticut, Rhode Island, Minnesota, and Florida, and Kyrish Idealease would be exposed to liability there even in the absence of any negligence on our part. Even if we are not subject to a lawsuit, the return of vicarious liability laws would lead to an increase in insurance costs, rental and lease costs, and an overall increase in the cost of commercial transportation. Ultimately, it is the consumer who suffers through higher costs of goods throughout the Nation.

I understand that your Committee will be holding a hearing on vicarious liability and the Graves Law on September 28. On behalf of Kyrish Truck Centers and Kyrish Idealease, I would greatly appreciate your help in preserving the vicarious liability uniformity law if the issue of repeal should be brought up in the Senate during the remainder of this Congressional Session. Thank you for your consideration, and please call me if you would like to discuss this issue and its critical importance to my Texas business.

Sincerely,

E.A. KYRISH,  
*President.*

Senator PRYOR. Mr. Ruby, you want to go ahead for us?  
Thank you. Thanks for being here.

**STATEMENT OF ETHAN RUBY,  
ACCIDENT VICTIM, NEW YORK, NEW YORK**

Mr. RUBY. Thank you very much, and it's an honor to be here and speaking on behalf of my fellow taxpaying Americans. I thank you for that opportunity.

My name is Ethan Ruby. On November 29, 2000, I was a pedestrian, in a crosswalk in New York City, walking with the marked cross—with a white "Walk" sign, and a driver, owned by Budget Rent A Car, ran a red light, striking a van in that intersection, and that car had the right-of-way. The ensuing collision, the van and other car careened into me, which resulted in me being immediately and irreparably paralyzed. I was 25 years old then.

Fortunately for me, because I lived in New York, whose laws at that time held the rental car companies accountable for the injuries caused by their negligent drivers. That was before the Graves Amendment. I was able to win compensation from Budget Rent A Car, and I've had a fighting chance to regain my life to the best of my abilities.

I'm here today to ask that Congress repeal the Graves Amendment. I speak today on behalf of tomorrow's accident victims, who will suffer catastrophic injuries, but lack the financial capacity to restore and improve the quality of their lives. If the Graves Amendment is not repealed, many of those victims are likely to lack the—likely to lack—access the essential medical care, replace their lost earnings, and provide them with a reasonable compensation for their suffering.

In my case, you should know that the driver of the Rent A Car had warrants out for his arrest for unpaid speeding tickets in other States. However, Budget gave this driver a car without checking the validity of his driver's license or his driving record.

Let me describe to you briefly, what the Budget Rent A Car driver did to me and what my life has been like since the accident.

In the aftermath of the accident, I was taken by ambulance to a local hospital, where I received emergency care and underwent major surgery to stabilize my condition. It was immediately clear that I would never walk again. I sustained an irreversible spinal cord injury. I could not move my legs, I was in intense pain, and I was more prepared to die than to live. Not only was I paralyzed, but I lost control of my bladder and bowel function; normal sexual function and capacity was also lost. Nothing has changed and nothing will change.

Months of incredibly difficult, arduous, and expensive rehabilitation followed my emergency and intensive care at the hospital. The struggle to regain the strength and ability just to learn to sit upright, using my head to balance, as I had lost all control of my chest and body, and then learn to be able to live from the place of a chair, was a monumental change. A wheelchair was going to be my way of moving from place to place for the rest of my life. For those who are able to walk normally, it may be hard to imagine the efforts it takes to learn to transition from walking to a wheelchair. Also, once you're confined to a wheelchair, you'll find that life does not accommodate to you, you are always—have to accommodate to that and the seeming insurmountable obstacles that come each and every day.

The cost of my medical and rehabilitation care has been astronomical. Once my limited private and personal medical insurance were exhausted, I was forced to use my savings to meet those expensive needs. And I relied on my family for as much help as possible.

Future medical, surgical, and rehabilitation care will also be very costly. My doctors predicted that the medical complication as I go through life will only increase, to avoid the inevitable infections and cascade of problems that they will cause. As you probably recall, Christopher Reeves died from complications of a spinal cord injury.

Before the accident, I was strong, healthy, athletic, running my own securities day-trading company, making a good living, and my future looked bright. Thankfully, I had a team of dedicated lawyers, led by Marc Moller and David Cook, of Kreindler & Kreindler, who prepared my case and represented me in a lengthy and hard-fought battle against Budget Rent A Car, who used their massive corporate profits to hire the best lawyers they could to protect those profits.

After years of litigation, just prior to jury selection, Budget conceded liability, leading the quantum of damages to be determined by the jury. Once the elements of damage were sought—one of the elements of damages were sought—to be able to harvest for—sperm for potential in vitro fertilization, should I be able to, one day, marry. Thankfully, I now share the joy of a 20-month old son with my wife, who I was lucky to be able to marry, only because I had the means to recover after this injury.

Despite all my pain, suffering, and loss, I was one of the lucky ones. My ordeal has brought me into contact with many spinal-cord-injury victims who I then try to—who I try to encourage to make the best of their lives, despite their circumstances. Their lives are incredibly hard. I know, from past experiences that they have shared with me, that their quality of life is directly influenced by the amount of money they have, or lack thereof. Without the money to obtain adequate care, replace the lost income, spinal-cord-injury victims' lives are victimized twice; first, by the accident caused by the injury, and second, with painful certainty that they will not have the financial resources to reach the highest level of recovery they might be able to achieve.

The reason the Graves Amendment has such a draconian and unfair impact is that it shifts the burden of loss from the profit-making rental companies and their insurers to the potential victims of their negligent drivers. It is simply unfair to make the innocent victims of accidents protect rental companies' coffers. Moreover, to the extent that the victims then need help, any limited relief most likely will have to come from the State; that means taxpayers ultimately foot the bill if victims cannot. That is what the Graves Amendment has done, and that is why I'm here to ask that Congress repeal it.

Thank you for your time.

[The prepared statement of Mr. Ruby follows:]

## PREPARED STATEMENT OF ETHAN RUBY, ACCIDENT VICTIM, NEW YORK, NEW YORK

Mr. Chairman:

My name is Ethan Ruby. On November 29, 2000, I was a pedestrian walking across a street in New York City within the marked pedestrian crosswalk with the right-of-way when a rental car owned by Budget Rent-A-Car ran a red light and struck a van in that intersection that had the right-of-way. In the ensuing collision, the van careened into the crosswalk and struck me, which resulted in my being immediately and irreparably paralyzed. I was then 25 years old.

Fortunately for me, because I live in New York whose law held rental car companies as vehicle owners responsible for injuries caused by their negligent drivers. Before the Graves Amendment became law, I was able to win compensation from Budget Rent-A-Car and have a fighting chance to make the best of my compromised life.

I am here today to ask that Congress repeal the Graves Amendment.

I speak on behalf of tomorrow's accident victims who will suffer catastrophic injuries, but lack the financial capacity to restore and improve the quality of their lives if commercial rental car companies are insulated from liability for the negligence of those who rent their vehicles. If the Graves Amendment is not repealed, many of those victims are likely to lack access to essential medical care, replace their lost earnings potential, and provide them with reasonable compensation for their suffering.

In my case, you should know that the driver of the rented car had warrants out for his arrest for unpaid speeding tickets when he commandeered the Budget car he was driving. To the best of my knowledge, nothing was done by Budget to check the validity of renters' driving records prior to entrusting their vehicle to them or even to determine whether their drivers licenses were in good standing. All a driver had to do was present a driver's license to a rental car agency's desk clerk and a credit card and he or she would be given a car. No questions were asked as to whether the driver had any other insurance in effect that would provide automobile liability protection to an innocent victim of an accident. Drivers were furthermore given the option of purchasing or declining automobile liability insurance coverage through the rental car company.

Let me describe for you what Budget Rent-A-Car's driver did to me and what my life has been like in the nearly 10 years since my accident.

In the aftermath of the accident, I was taken by ambulance to a local hospital in New York where I received emergency care and underwent major surgery to stabilize my condition. It was immediately clear that I would never walk again. I sustained an irreversible spinal cord injury. I could not move my legs, was in intense pain, and was more prepared to die than to live. Not only was I paralyzed, I lost control of my bladder and bowel function. Normal sexual function and capacity was also lost. Nothing has changed. Nothing will change.

Months of incredibly difficult and arduous rehabilitation followed my emergency and intensive care in the hospital. The struggle to gain the strength and ability just to learn to sit upright using my head to balance me (as I had lost all control of my body from the chest down) and then to learn and be able to move from a stable chair or bed into a wheelchair was a monumental challenge. A wheelchair was going to be my way of moving from place-to-place for the rest of my life. For those who are able to walk normally it may be hard to imagine the effort it takes to learn how to transition from walking to a wheelchair. Also, once you are confined to a wheelchair, you find that life does not accommodate you and there are constant, seemingly insurmountable obstacles to overcome to adapt to your new condition.

The cost of my medical and rehabilitation care was astronomical. Once my limited private and personal medical insurance was exhausted, I was forced to use savings to meet many of the expenses, and I relied on my family for as much help as they were able to provide. Future medical, surgical and rehabilitation care will likewise be very costly.

My doctors predicted medical complications as I go through life. They are right. I must be diligent to avoid infection and the cascade of problems they cause.

Before the accident I was strong, healthy, athletic, running my own securities day trading business and making a good living. The future looked bright.

Thankfully, I had a team of dedicated lawyers led by Marc S. Moller and David C. Cook of Kreindler & Kreindler who prepared my case and represented me in a lengthy and hard fought trial against Budget Rent-A-Car. After years of litigation, just prior to jury selection, Budget conceded liability leaving the quantum of damages to be determined by the jury. The jury returned a substantial verdict in December 2004. With minor adjustment after the defendant sought a reduction in the verdict, it was upheld on appeal. (Attached to the statement are two opinions for

the trial and Appellate Court in my case and the brief which explains our position in detail.) One of the elements of damages we sought was money to harvest sperm to be available for in vitro fertilization were I able to marry. I now share the joy of a young son, 20-months-old, with my beautiful wife who I married after I was injured and progressed to my present level of recovery.

I was lucky!

My ordeal has brought me into contact with many spinal cord injury victims who I try to encourage to make the best of their lives despite their circumstances. Their lives are incredibly hard. I know from the experiences they have shared with me that the quality of their lives is directly influenced by the amount of money they have, or lack, to gain the best medical care possible and to make the adjustments that will make their lives livable. Without the money to obtain adequate care and replace lost income, spinal cord accident victims' lives are victimized twice: first by the accident that caused the injury and second, with painful certainty, that they will not have the financial resources to reach the highest level of recovery their condition allows nor experience any realistic enjoyable quality of life.

The reason the Graves Amendment has such a draconian and unfair impact is that it shifts the burden of loss from the profit-making rental car companies and their insurers who have the capacity to protect their economic interest, to the potential victims of their negligent drivers. It simply is unfair to make the innocent victims of accidents protect rental car company coffers. Moreover, to the extent that victims then need help, any limited relief most likely has to come from the state. Taxpayers ultimately foot the bill if victims cannot. That is what the Graves Amendment has done.

The Graves Amendment should be repealed.

Senator PRYOR. Thank you.

Mr. Leesfield.

**STATEMENT OF IRA H. LEESFIELD, PAST PRESIDENT,  
ACADEMY OF FLORIDA TRIAL LAWYERS**

Mr. LEESFIELD. Thank you, Mr. Chairman. And I want to thank Senator Nelson for his very kind remarks at the beginning of the session.

I am here to speak on why the Graves Amendment is a really bad idea, an idea that was not thought out and not well conceived.

Now, Mr. Chairman, the Graves Amendment was not a bad idea for the major rental car companies of the United States, but it was a very bad idea for the citizens of the United States, and a very bad idea for States' rights, and a very bad idea for the U.S., local, and State governments. So, I'd like to address each one of those in my brief time.

We've heard from a citizen—we've heard from Ethan—but his story is not alone, and it's not isolated. The Graves Amendment, passed in 2005, shifted the responsibility from corporate rental car companies to governments, local hospitals, local healthcare providers, and anybody who would take—pick up the tab for somebody injured by a rental car company.

Now, in real life, Mr. Chairman, may I tell you how this really worked? Any State, such as Florida, where I'm from, but any State had the right to pass a State law. Florida had State laws which said that rental car companies were responsible, up to a certain amount. For the history of the State of Florida, as a matter of States' rights, Floridians could recover from corporate wrongdoers, including rental car companies.

Now, in 1999, a Republican Governor, a Republican Senate and a Republican House in Florida, as a matter of States' rights, limited Floridians' recoveries but did not eliminate those recoveries; it merely limited them. And that limitation was a maximum recovery

of \$100,000 for economic loss—for noneconomic loss, and \$500,000 for economic loss.

That now has been totally eliminated by Graves. What Graves has done is taken away the States' rights to be the experimental place for individuals who are injured. In Florida, for instance, we have 8.6 million foreign visitors a year, as Senator Nelson alluded to, and we have 76 million domestic visitors. Those people, whether they come from Asia, South America, the Orient, wherever, come into Florida. There is no requirement that they have insurance.

They rent a car. There's no requirement that they have financial responsibility. And if they injure someone, like Ethan or anybody else, they go back to their home country, their home venue, and we are left holding the bag. The "we" being the taxpayers. Because when people are injured and there is no corporate responsibility, what happens is, the taxpayers, either the local counties, the States, or the Federal Government, pick up the tab. Someone is going to pay for the medical care. If Nathan—Ethan did not get a fair recovery, he would have been—his medical care would have been provided for by the taxpayers of New York or elsewhere.

So, what Graves does, really—it's a good idea for the rental companies. There's no—this is a—Enterprise, for instance, is a 10.1-billion-dollar-a-year—billion-dollar-a-year—company. Enterprise has bought Alamo. If the Chair and the Committee look at the submission of the rental car industry, you do not see as one of their sponsors, on page seven, you do not see the mom-and-pop operation that they claim to be protecting in a pro-competitive way; you only see the big five. You only see the largest rental car companies, who, candidly, are just making more profit on an insurable loss.

If you go to page 10 of their "Positive Results": Since the passage of Graves in 2005, the courts have paid great deference, as they should, to Congress. Now, the courts don't know that Graves never got a hearing in the Senate, that there was 20 minutes of discussion about Graves, 5 minutes from Congressman Nadler, 5 minutes from Mr. Graves, and 10 minutes from Mr. Conyers; that was the end of the discussion. They don't know that. The courts say, "We're going to follow what the Congress has done."

So, on page 10, when the industry lists their positive results—and they call them that: "positive results"—they include Ethan—they'd like to include Ethan, but they didn't, because his accident happened beforehand—as one of the positive results. In other words, "We, the rental car industry, are not going to pay for the injury and the damage and the loss that we caused by not checking a driver's license, by not insisting on insurance, by not checking the driver's record." All you check—go, today, to a rental-car stand at any airport or anywhere else, and all that gets checked is your credit card and to see if you submit a driver's license. We never go beyond what that driver's license says about the drinking record, the safety record of the driver.

So, Mr. Chairman, you opened this session with the impact—your words were "the impact on highway safety." I'm here to tell you that, when you don't have corporate responsibility, you don't have highway safety. And what Graves has done, it has eliminated—not modified, as each State has the right to do, not fine-tuned, not somewhat limited—it has eliminated corporate responsi-

bility in the rental-car sphere, a sphere that 15 States plus the District of Columbia enforced, in their own way, in their own legislature, and with their own common law.

So, we don't want any more "positive results." We want Ethan to be able—if he's wrongly injured, we want him to be able to go to court. Graves and the industry, the five giants of the industry, have eliminated a right, in an uncareful, rushed way in 2005, and that—it is now time to turn back the clock to the right way and turn back the clock to true justice.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Leesfield follows:]

PREPARED STATEMENT OF IRA H. LEESFIELD, PAST PRESIDENT,  
ACADEMY OF FLORIDA TRIAL LAWYERS

In Florida, District of Columbia, and fourteen other states, including New York and California, vicarious liability has been part of legal jurisprudence, dating back for almost 90 years. As enunciated by the Florida Supreme Court in *Southern Cotton Oil Co. v. Anderson*, 80 Fla. 44, 86 So. 629 (1920), the owner of an automobile ". . . may not deliver it over to anyone he pleases and not be responsible," Southern Cotton. Vicarious liability, as recognized in 1920, was extended to automobile lessors by the Florida Supreme Court in 1947. *Lynch v. Walker*, 31 So. 2d 268 (Fla. 1947), and again in *Susco Car Rental System v. Leonard*, 112 So. 2d 832 (Fla. 1959).

Fifteen of the similarly situated states developed, either by statute or common law, a mechanism for protecting its citizens and visitors from the life changing negligence of those behind the wheel of a vehicle entrusted to them.<sup>1</sup>

Not surprisingly, the importance of vicarious liability to the modern proliferation of the rental car industry coincided with a huge number of U.S. and foreign visitors coming into jurisdictions, doing harm and leaving. For instance, the Florida Chamber of Commerce recently reported over 82 million people visit Florida every year, and the numbers for California and New York are similar.

Necessarily, these jurisdictions shifted to vehicle owners, including for profit rental companies, accountability for the destruction of mayhem left behind when rental vehicles caused life-changing injuries and deaths within their borders.

In 2004, "out of the blue" or more understandably, out of Missouri, the home of Enterprise Rental Cars, came the notion that the rental car industry should be granted full immunity from any damage caused by a driver who they entrusted their vehicle to for profit. In other words, no matter what the driving record or availability of insurance of the rental car driver, the rental car industry was to be completely immune and shielded from damages to innocent bystanders. This would, and did, wipe out any notion of rental car responsibility.

Rental car companies tried to repeal vicarious liability statutes, state-by-state, particularly, New York. They were not successful inasmuch as the law-making bodies of these states felt it was necessary to incentivize safety by making profitable companies, who rent to negligent drivers, responsible for the life changing injuries to innocent parties. The industry then changed their focus from state legislature to Congress. In 2004, during the debate of the highway reauthorization bill, SAFETEA-LU, Representative Graves (R-MO) introduced an amendment specifically and completely abolishing rental vicarious liability under any state law. *There was never any committee hearing on the issue.* Nevertheless, the amendment failed in the Committee. In late 2004, Representative Graves brought the amendment up during the House floor debate, and the amendment failed by a voice vote. He then introduced the amendment again in January 2005, and asked for a recorded vote, at which time the amendment narrowly passed with bipartisan support and opposition. *The amendment was never introduced in the Senate.* Despite the objections of numerous groups, including the National Conference of State Legislatures, the amendment became part of the final bill language and is now codified in the U.S. Code.<sup>2</sup>

In the 5 years since the passage of the Graves' Amendment (as contrasted with the long history of state vicarious liability laws), Federal, state, county and local governments have been picking up the tabs and subsidizing the rental car industry by paying for enormous medical expenses and social services provided to those in-

<sup>1</sup> List of States—attached.

<sup>2</sup> 49 U.S.C. § 30106 (2005).

jured, maimed or killed by rental car customers. Annually, in Florida, there are thousands of examples, where visitors from overseas, or throughout the United States fly to Orlando, rent a car, and for a variety of reasons, cause egregious injuries to a Florida family or even another family visiting from out-of-state.<sup>3</sup> At the point of rental, there is no requirement to produce insurance, a valid driver's license, check a driving record, or even familiarize the renter/user with the rules of the road. It is a free for all! The rental car industry only requires verification of the credit card to protect themselves, often leaving the innocent state resident without any recourse to injury or death.

The net effect and history of the law in Florida and other states has been unnecessarily tragic. For instance, the Florida legislature in 1999, as part of a sweeping state tort reform statute, *modified, but did not eliminate*, vicarious liability for rental car companies. A Florida House and Senate controlled by Republicans and a Florida Republican Governor Jeb Bush, determined, as a matter of state's rights, that at least the economic interest of the innocent and injured Floridian would be recognized. In 1999, Florida passed § 324.021(9)(b)(2), which modified vicarious liability allowing the injured party to recover \$500,000 in special damages, which would pay only for medical expenses and lost wages and an additional \$100,000 for pain, disfigurement and loss of quality of life. This carefully crafted language is what the Florida legislature determined was best for the people and the State of Florida.

Inadequate as that recovery may seem, that was the law of Florida until the rental car industry opted for complete abolition on the Federal law. The 1999 Florida law, before Graves, really served as a conduit allowing Federal, State, county and local hospitals and healthcare providers to be paid by the rental car malfeasant. Part of the burden remained with the rental car industry as a matter of public policy and financial responsibility. The most severely injured or killed citizen could get, even for a lifetime of pain and suffering, only \$100,000 from the rental car company. Now, under the present Graves' Amendment, there is no recourse whatsoever. The rental car industry obtained government subsidy for damage caused by their vehicles. All the while, insurance coverage to the rental car industry has been available.

The price is paid by innocent residents of states with large visiting populations, and ultimately, paid for by taxpayers and medical facilities. The rental car customer, whether from Sweden or Seattle, returns the car, leaving the carnage on the road and drives off, scot-free. Under the Graves' Amendment, a rental car company that rents to these damaging drivers, without checking for insurance, has complete immunity. Innocent victims and their governments are left holding the bag. That bag is paid for by Medicare, Medicaid, Social Security, and/or state and local healthcare providers.

The Graves' Amendment should be repealed under our system of federalism and state legislatures should be permitted to govern legislation uniquely evaluated by state legislatures.

#### ATTACHMENT

#### Vicarious Liability State Statutes \*

Updated February 2009

State	Type of Liability	Case Citation or Statute
Arizona	Unlimited Liability	The owner of a motor vehicle who rents it to another without a driver, other than as a bona fide transaction involving the sale of the motor vehicle, without having procured the required public liability insurance or without qualifying as a self-insurer pursuant to §§ 28-4007 with at least the minimum limits prescribed in subsection A of this section [\$15,000 for one vehicle; \$10,000 for each additional motor vehicle. Proof of the ability to respond in damages in the amount of one hundred thousand dollars is sufficient for any number of motor vehicles] is jointly and severally liable with the renter for damage caused by the negligence of the renter operating the motor vehicle. Ariz. Rev. Stat. § 28-2166(A),(F).
California	Limited Liability	Every owner of a motor vehicle is liable and responsible for death or injury to person or property resulting from a negligent or wrongful act or omission in the operation of the motor vehicle, in the business of the owner or otherwise, by any person using or operating the same with the permission, express or implied, of the owner. Cal. Veh. Code § 17150.

<sup>3</sup> Some of the more telling cases include visitors from other jurisdictions with completely different driving customs, driving on the wrong side of the road and killing innocent pedestrians.



Vicarious Liability State Statutes\*—Continued  
Updated February 2009

State	Type of Liability	Case Citation or Statute
		The liability of an owner, bailee of an owner, or personal representative of a decedent imposed by this chapter and not arising through the relationship of principal and agent or master and servant is limited to the amount of <i>fifteen thousand dollars (\$15,000) for the death of or injury to one person in any one accident and, subject to the limit as to one person, is limited to the amount of thirty thousand dollars (\$30,000) for the death of or injury to more than one person in any one accident and is limited to the amount of five thousand dollars (\$5,000) for damage to property of others in any one accident.</i> Cal. Veh. Code § 17151.
Connecticut	Unlimited Liability	Any person renting or leasing to another any motor vehicle owned by him shall be liable for any damage to any person or property caused by the operation of such motor vehicle while so rented or leased, to the same extent as the operator would have been liable if he had also been the owner. Conn. Gen. Stat. § 14–154(a).
Delaware	Unlimited Liability	The owner of a motor vehicle who is engaged in the business of renting motor vehicles without drivers, who rents any such vehicle without a driver to another, otherwise than as a part of a bona fide transaction involving the sale of such motor vehicle, and permits the renter to operate the vehicle upon the highways and who does not carry or cause to be carried public liability insurance in an insurance company or companies approved by the Insurance Commissioner of this State insuring the renter against liability arising out of the renter's negligence in the operation of such rented vehicle in limits of not less than \$10,000 for anyone killed or injured and \$20,000 for any number more than 1 injured or killed in any 1 accident, and against liability of the renter for property damage in the limit of not less than \$5,000 for 1 accident, shall be jointly and severally liable with the renter for any damages caused by the negligence of the latter in operating the vehicle and for any damages caused by the negligence of renting the vehicle from the owner. Del. Code Ann. tit. 21, § 6102(a).
D.C.	Unlimited Liability	Whenever any motor vehicle, after the passage of this subchapter, shall be operated upon the public highways of the District of Columbia by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed to be the agent of the owner of such motor vehicle, and the proof of the ownership of said motor vehicle shall be prima facie evidence that such person operated said motor vehicle with the consent of the owner. D.C. Code Ann. § 50–1301.08.
Florida	Limited Liability	Common law doctrine of Dangerous Instrumentality. <i>Limited by Fla. Stat. § 324.021 which limits car rental company vicarious liability to \$100,000 per person and up to \$300,000 per incident for bodily injury and up to \$50,000 for property damage. If the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than \$500,000 combined property damage and bodily injury liability, the lessor shall be liable for up to an additional \$500,000 in economic damages only arising out of the use of the motor vehicle. The additional specified liability of the lessor for economic damages shall be reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator.</i> § 324.021(9)(b)(2).
Idaho	Limited Liability	(1) Every owner of a motor vehicle is liable and responsible for the death of or injury to a person or property resulting from negligence in the operation of his motor vehicle, in the business of the owner or otherwise, by any person using or operating the vehicle with the permission, expressed or implied, of the owner, and the negligence of the person shall be imputed to the owner for all purposes of civil damages. (2) The liability of an owner for imputed negligence imposed by the provisions of this section and not arising through the relationship of principal and agent or master and servant is limited to the amounts set forth under "proof of financial responsibility." Idaho Code § 49–2417 "Proof of financial responsibility" means proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of the proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of <i>twenty-five thousand dollars (\$25,000) because of bodily injury to or death of one (1) person in any one (1) accident, and, subject to the limit for one (1) person, in the amount of fifty thousand dollars (\$50,000) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and in the amount of fifteen thousand dollars (\$15,000) because of injury to or destruction of property of others in any one (1) accident.</i> Idaho Code § 49–117

Vicarious Liability State Statutes \*—Continued  
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State	Type of Liability	Case Citation or Statute
Iowa	Unlimited Liability	In all cases where damage is done by any motor vehicle by reason of negligence of the driver, and driven with the consent of the owner, the owner of the motor vehicle shall be liable for such damage. Iowa Code § 321.493
Maine	Unlimited Liability	An owner engaged in the business of renting motor vehicles, with or without drivers, who rents a vehicle to another for use on a public way, is jointly and severally liable with the renter for damage caused by the negligence of the renter in operating the vehicle and for any damages caused by the negligence of a person operating the vehicle by or with the permission of the renter. 29–A Me. Rev. Stat. § 1652 Limitation: This section does not give a passenger in a rented vehicle a right of action against the owner. Also, this section does not affect contributory negligence as a defense.
Michigan	Limited Liability	This section shall not be construed to limit the right of a person to bring a civil action for damages for injuries to either person or property resulting from a violation of this act by the owner or operator of a motor vehicle or his or her agent or servant. The owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle . . . The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge. It is presumed that the motor vehicle is being driven with the knowledge and consent of the owner if it is driven at the time of the injury by his or her spouse, father, mother, brother, sister, son, daughter, or other immediate member of the family. Mich. Comp. Laws § 257.401(1). As used in this chapter, "owner" does not include a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days. Mich. Comp. Laws § 257.401a. A person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle under a lease providing for the use of the motor vehicle by the lessee for a period of 30 days or less is liable for an injury caused by the negligent operation of the leased motor vehicle only if the injury occurred while the leased motor vehicle was being operated by an authorized driver under the lease agreement or by the lessee's spouse, father, mother, brother, sister, son, daughter, or other immediate family member. Unless the lessor, or his or her agent, was negligent in the leasing of the motor vehicle, the lessor's liability under this subsection is limited to \$20,000.00 because of bodily injury to or death of 1 person in any 1 accident and \$40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident. Mich. Comp. Laws § 257.401(3).
Minnesota	Limited Liability	Whenever any motor vehicle shall be operated within this state, by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed the agent of the owner of such motor vehicle in the operation thereof. Minn. Stat. §170.54. Notwithstanding section 170.54, an owner of a rented motor vehicle is not vicariously liable or legal damages resulting from the operation of the rented motor vehicle in an amount greater than \$100,000 because of bodily injury to one person in any one accident and, subject to the limit for one person, \$300,000 because of injury to two or more persons in any one accident, and \$50,000 because of injury to or destruction of property of others in any one accident, if the owner of the rented motor vehicle has in effect, at the time of the accident, a policy of insurance or self-insurance, as provided in section 65B.48, subdivision 3, covering losses up to at least the amounts set forth in this paragraph. Nothing in this paragraph alters or affects the obligations of an owner of a rented motor vehicle to comply with the requirements of compulsory insurance through a policy of insurance as provided in section 65B.48, subdivision 3; or through self-insurance as provided in section 65B.48, subdivision 3; or with the obligations arising from section 72A.125 for products sold in conjunction with the rental of a motor vehicle. Nothing in this paragraph alters or affects liability, other than vicarious liability, of an owner of a rented motor vehicle. Minn. Stat. 65B.49, subd. 5(h)(i)(2).

Vicarious Liability State Statutes\*—Continued  
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State	Type of Liability	Case Citation or Statute
Nevada	Limited Liability	The short-term lessor of a motor vehicle who permits the short-term lessee to operate the vehicle upon the highways, and <i>who has not complied with NRS 482.295 insuring or otherwise covering the short-term lessee against liability arising out of his negligence in the operation of the rented vehicle in limits of not less than \$15,000 for any one person injured or killed and \$30,000 for any number more than one, injured or killed in any one accident, and against liability of the short-term lessee for property damage in the limit of not less than \$10,000 for one accident</i> , is jointly and severally liable with the short-term lessee for any damages caused by the negligence of the latter in operating the vehicle and for my damages caused by the negligence of any person operating the vehicle by or with the permission of the short-term lessee, except that the foregoing provisions do not confer any right of action upon any passenger in the rented vehicle against the short-term lessor. This section does not prevent the introduction as a defense of contributory negligence to the extent to which this defense is allowed in other cases. Nev. Rev. Stat. § 482.305
New York	Unlimited Liability	Every owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle, in the business of such owner or otherwise, by any person using or operating the same with the permission, express or implied, of such owner. Whenever any vehicles as hereinafter defined shall be used in combination with one another, by attachment or tow, the person using or operating any one vehicle shall, for the purposes of this section, be deemed to be using or operating each vehicle in the combination, and the owners thereof shall be jointly and severally liable hereunder. N.Y. Veh. & Traf. Code § 388.
Oklahoma	Limited Liability	<p>(a) In the event the owner of a for-rent motor vehicle has not given proof of financial responsibility as provided in Section 8–101 of this title, then the Tax Commission shall not register any motor vehicle owned by such person and rented, or intended to be rented, to another unless such owner shall demonstrate, to the satisfaction of the Commissioner, his financial ability to respond in damages as follows:</p> <ol style="list-style-type: none"> <li>1. If he applies for registration of one motor vehicle, in e sum of at least Twenty Thousand Dollars (\$20,000.00) for any one person injured or killed and in e sum of Forty Thousand Dollars (\$40,000.00) for any number more than one injured or killed in any one accident.</li> <li>2. If he applies for the registration of more than one motor vehicle, then in the foregoing sums for one motor vehicle, and Twenty Thousand Dollars (\$20,000.00) additional for each motor vehicle in excess of one, but it shall be sufficient for the owner to demonstrate ability to respond in damages in the sum of Two Hundred Thousand Dollars (\$200,000.00) for any number of motor vehicles.</li> </ol> <p>(b) The Department shall cancel the registration of any motor vehicle rented without a driver whenever the Department ascertains that the owner has failed or is unable to comply with the requirements of this section.</p> <p>(c) Any owner of a for-rent motor vehicle who has given proof of financial responsibility under this section or who in violation of this act, has failed to give proof of financial responsibility shall be jointly and severally liable with any person operating such vehicle for any damages caused by the negligence of any person operating the vehicle by or with the permission of the owner, except that the foregoing provision shall not confer any right of action upon any passenger in any such rented vehicle as against the owner. 47 Okla. Stat. Ann. § 8–102</p>
Pennsylvania	Limited Liability	Failure of a person engaged in the rental of motor vehicles to comply with sections 1 and 2 ( <i>i.e.</i> , section 2151 and 2153, which provide, respectively, as follows: No motor vehicle rented or leased from any location in this Commonwealth may be covered by an insurance policy or self-insurance arrangement which excludes benefits if the lessee or any other authorized driver is involved in a vehicular accident while under the influence of drugs or intoxicating beverages at the time of the accident; and it shall be the duty of the lessor of motor vehicles to ensure that, in the event the rented motor vehicle is not returned during the contracted rental period, all liability or first party coverage continues until such time as the motor vehicle is reported to the police as stolen) shall, as a matter of law, render such person responsible for the mandated minimum limits of financial responsibility set forth in the Motor Vehicle Financial Responsibility Law arising out of the use of the motor vehicle for which the lessee would otherwise be responsible. 73 Pa. Stat. § 2153

## Vicarious Liability State Statutes\*—Continued

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State	Type of Liability	Case Citation or Statute
Rhode Island	Limited Liability [Effective until June 2, 2009]	<p>(a) Except as provided below, any owner of a for hire motor vehicle or truck who has given proof of financial responsibility under this chapter or who in violation of this chapter has failed to give proof of financial responsibility, shall be jointly and severally liable with any person operating the vehicle for any damages caused by the negligence of any person operating the vehicle by or with the permission of the owner.</p> <p>(b) The liability of a lessor of a short-term rental motor vehicle or truck under this section shall be subject to a limit of \$250,000 for bodily injury to or the death of one person, and subject to the limit for one person, to a limit of \$500,000 for bodily injury to or the death of two or more persons in any one accident, and a limit of \$25,000 because of injury to or destruction of property of others in any one accident.</p> <p>(c) With respect to any long-term lease motor vehicle or truck: (1) the owner and/or lessor (and/or its successors or assignees) of a long-term lease motor vehicle or truck who is not the operator of the vehicle at the time of an accident shall not be jointly and severally liable with the operator and/or the lessee of the vehicle for any damages caused by the negligence of any person operating the vehicle if, at the time of the accident, the lessee has valid motor vehicle liability insurance which contains limits in an amount equal to or greater than \$100,000 for bodily injuries to any one person in any one accident, \$300,000 for bodily injuries in any one accident, and \$50,000 for damage to property of others in any accident or a combined single limit of \$300,000 or greater; (2) If the lessee of a long-term lease motor vehicle or truck does not have insurance in the amounts set forth in subsection (c)(1) above, then the liability of the owner and/or lessor (and/or its successors or assignees) of a long-term lease motor vehicle or truck shall not exceed the difference between: (1) the motor vehicle liability insurance limits actually maintained by the lessee of the long-term lease motor vehicle or truck at the time of the accident; and (2) \$100,000 for bodily injuries to any one person, \$300,000 for bodily injuries in any one accident, and \$50,000 for damage to property of others in any accident. (d) Nothing in this section shall be construed to prevent an owner who has furnished proof of financial responsibility or any person operating the vehicle from making defense in an action upon the ground of comparative negligence to the extent to which the defense is allowed in other cases (e) Notwithstanding the provisions of subsection (a) of this section, or any provisions contained under title 31 to the contrary, the operator's valid collectable liability or self-insurance providing coverage or liability protection for any third party liability claims shall be primary, and the valid and collectable liability or self-insurance providing coverage or liability protection for any third-party liability claims for the owner and/or lessor arising out of the operation of the vehicle shall be excess. This shall be stated in ten (10) point type on the face of any short-term rental agreement. R.I. Stat § 31-34-4(b).</p>
Wisconsin	Limited Liability	<p>(1) No lessor or rental company may for compensation rent or lease any motor vehicle unless there is filed with the department on a form prescribed by the department a certificate for a good and sufficient bond or policy of insurance issued by an insurer authorized to do an automobile liability insurance or surety business in this state. The certificate shall provide that the insurer which issued it will be liable for damages caused by the negligent operation of the motor vehicle in the amounts set forth in s. 344.01(2)(d). No lessor or rental company complying with this subsection, and no lessor or rental company entering into or acquiring an interest in any contract for the rental or leasing of a motor vehicle for which any other lessor or rental company has complied with this subsection, is liable for damages caused by the negligent operation of the motor vehicle by another person.</p>

Vicarious Liability State Statutes\*—Continued  
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State	Type of Liability	Case Citation or Statute
		(2) Any lessor or rental company failing to comply with this section is directly liable for damages caused by the negligence of the person operating such rented or leased vehicle, but such liability may not exceed the limits set forth in s. 344.01(2)(d) with respect to the acceptable limits of liability when furnishing proof of financial responsibility. ["Proof of financial responsibility" or "proof of financial responsibility for the future" means proof of ability to respond in damages for liability on Account of accidents occurring subsequent to the effective date of such proof, arising out of the maintenance or use of a motor vehicle in the amount of \$25,000 because of Bodily injury to or death of one person in any one accident and, subject to such limit for one person, in the amount of \$50,000 because of bodily injury to or death of 2 or more persons in any one accident and in the amount of \$10,000 because of injury to or destruction of property of others in any one accident.] Wis. Stat. § 344.51

\*Note: this chart lists only vicarious liability statutes pertaining to motor vehicles which are rented, loaned, or leased by the owner to other adults. It does not include statutes specific to minor use, employee use, or insurance statutes which set forth mandatory insurance provisions for rental cars or owner-operator coverage. For purposes of this chart, vicarious liability is not categorized as limited where the basis for the limitation is the length of time that a motor vehicle has been rented or leased and/or the weight of a motor vehicle. (e.g., Iowa Code Ann. § 321.493 limits vicarious liability where a vehicle is leased for a period of 12 months or more pursuant to a written agreement.)

Senator PRYOR. Thank you.  
Mr. James.

**STATEMENT OF THOMAS M. JAMES, PRESIDENT AND CEO,  
TRUCK RENTING AND LEASING ASSOCIATION**

Mr. JAMES. Thank you, Mr. Chairman. I appreciate the opportunity to testify here on this issue of vicarious liability.

My name is Tom James. I'm the President and CEO of the Truck Renting and Leasing Association. However, I'm testifying on behalf of a much broader coalition, which illustrates the much broader impact that these vicarious liability laws have on transportation in general, both commercial transportation and consumer transportation.

The members of our coalition include the U.S. Chamber of Commerce, National Federation of Independent Business, the American Trucking Associations, and associations representing rental car companies, auto dealers, truck dealers, and auto manufacturers. This is much more than a car rental issue, this is a consumer choice issue and this is a business transportation issue.

We support the Graves voucher provision as enacted in SAFETEA-LU. Graves voucher eliminates liability—without fault, only—for vehicle renting and leasing companies, making the system of assigning liability more fair.

Let's just be clear what Graves voucher does and doesn't do:

Graves voucher *does not* protect any rental, leasing, or car-sharing company from liability for its own negligence. In essence, Mr. Leesfield, the corporate wrongdoers—if you are a wrongdoer, you are not protected by Graves. If you are found liable of any sort of negligence, you are not protected by Graves.

What Graves does do is, it preserves the rights of States to enact laws mandating the minimum levels of insurance coverage for the privilege of operating and registering a vehicle. States still strive to strike a balance—and I'm sure it's not an easy one for State legislatures—between affordable insurance and victim compensation. But, make no mistake, there are no uninsured rental or leased vehicles on the road, even those driven by foreign drivers. Every vehi-

cle that leaves a rental car shop, or that leaves an auto dealer's lot, that's leased by a consumer, is covered by the minimal levels of financial responsibility that that particular State in which the transaction has occurred has determined is appropriate and right.

As Americans, we believe that individuals must be held responsible for the consequences of what they do. But, a doctrine of vicarious liability imposes liability on non-negligent companies. This doctrine dates back to the days when horse-and-buggy rental operators were supposed to know the personalities of their horses and when chauffeured drivers—when a limo got in an accident, you wanted to get to the guy in the back of the car, not the guy driving the car, because that's where the money was.

Nowadays, in contrast, non-negligent rental and leasing companies cannot foresee whether our customers will drive our cars across State lines; and in some cases, with some of my association members, we expect them, because they are engaged in interstate commercial transportation.

The interstate nature of rental and leasing share—and car-shared fleets just does not work with the patchwork nature of varying State vicarious liability laws. These laws leave non-negligent—prior to 2005, left non-negligent rental and leasing companies vulnerable to liabilities, which we can neither anticipate nor avoid.

We know what will happen if existing law is reversed; non-negligent companies will again be exposed to exorbitant liability awards—most importantly, that bear no relationship to the company's fault or the company's negligence—solely on the basis of ownership. And there's no doubt that these incidents are human tragedies, individuals and families deserve to be compensated, but they deserve to be compensated by parties and entities whose negligence contributed to the accident.

In many cases—I have a couple of examples in my written testimony—in 1991, a car was rented from Alamo in Fort Lauderdale. The driver of the car, after he left the rental shop, fell asleep. The car veered off the road. Solely on the basis of ownership, a \$7.7-million award.

For 17 years, Sharon Faulkner, who I think has testified before this committee—she owned a car rental company, rented a car to a woman, the woman lent the car to her son, an unauthorized driver; that gentleman got in an accident; her company was driven out of business because of that nonauthorized driver's activities.

Congress has debated this issue. It has debated it twice in the House of Representatives, voted on it once, on a rollcall vote. It came up extensively in Congress. The law has been upheld by the Florida Supreme Court, the highest courts in Minnesota and Connecticut. The law has been upheld by the U.S. District Court and U.S. Court of Appeals. All of those courts recognized both the interstate nature of the car and truck rental and lease fleet, as well as the authority of Congress, because of that interstate nature, to enact a Federal law regarding liability for those vehicles that travel across State lines.

Let's—this has been debated by Congress. Congress took action, under its own authority. Let's not make what has been made right—make it wrong again. Let's not compel consumers and businesses to pay higher costs for liability over which the rental car,

the rental truck, or the car and truck leasing company has no ability to avoid. There are no practices they can take to protect them from this exposure. It's solely on the basis of owning the vehicles. I know I'm almost out of time, here. If I just can sum up:

We're talking about fairness, consumer choice, American jobs. In all of the previous panels, we talked—we heard about some of the most dangerous issues that are out there for highway safety: drunk driving, distracted driving, untrained teen drivers. All of these safety issues revolve around the driver. Whether those drunk-driving or distracted-driving incidents happened in a red Taurus that was rented from Enterprise or whether it was a red Taurus that was bought from Koons Ford, doesn't make a difference as to the safety and the impact of the incidents that happened in that car. It really goes down to the driver.

And I'm happy to answer any questions, but we strongly support the Graves law.

Thank you.

[The prepared statement of Mr. James follows:]

PREPARED STATEMENT OF THOMAS M. JAMES, PRESIDENT AND CEO,  
TRUCK RENTING AND LEASING ASSOCIATION

My name is Tom James. I am President and CEO of the Truck Renting and Leasing Association. I am testifying today on behalf of a broad coalition of companies, trade associations, and other stakeholders who were significantly impacted by state vicarious liability laws before Congress took action in 2005. The breadth and depth of our coalition is conveyed by the fact that our members include the U.S. Chamber of Commerce, the National Federation of Independent Business, the American Trucking Association, and associations representing rental car companies, auto dealers, truck dealers, auto manufacturers and other segments of our industry. (See attached list of supporters of members of the coalition supporting Graves/Boucher.)

The nation's car and truck renting, leasing and sharing industry is an important part of the American economy, supporting jobs and business activity in communities throughout this country.

For instance, in truck renting and leasing, there are about 550 companies, employing 100,000 people, and operating out of about 24,000 locations in the United States. As with leased automobiles, there are few identifying marks to distinguish trucks that are owned by their operators from trucks that are leased or rented by their operators. But one out of every five trucks on the highways is rented or leased.

Meanwhile, rented, leased and shared cars account for a large share of American automobiles. In 2009, the U.S. rental car industry had 1.6 million cars in service at over 16,000 locations. In fact, every year, 22 percent of the purchases of American-made cars and light-duty vehicles are for commercial fleet leasing use.

Our coalition supports the Graves/Boucher provision included in the Transportation Equity Act of 2005. It eliminated liability without fault for vehicle renting and leasing companies. And it preserved the states' ability to enact insurance laws to protect consumers and their right to sue companies for their negligence in the rental or leasing of vehicles.

Over the past 5 years, Graves/Boucher has had many beneficial effects for consumers, companies, employers and the entire economy. Among other benefits, environmentally friendly car-sharing programs have grown rapidly since the enactment of Graves/Boucher. And consumer auto lessors are offering affordable options for car acquisition in New York, specifically in response to the enactment of Graves Law.

In supporting Graves/Boucher, we believe that we are defending three basic, bed-rock concerns: simple fairness, American jobs, and consumer choice.

Before I go any further, let me be clear about what Graves/Boucher does and does not do. To put it plainly, there are no uninsured rental or leased vehicles on the road.

The language in the law emphasizes that states continue to have the right to enact and enforce laws mandating insurance coverage levels for the privilege of operating and registering a vehicle—minimum levels of financial responsibility or MFR. This provision also ensures that states have the right, if they so choose, to set higher levels of MFR for rented or leased vehicles.

To repeat this point, because it is so important: Under these MFR statutes, there are no uninsured consumer rental or leasing vehicles. Each vehicle is covered up to an amount determined by the state to be an appropriate minimum level of insurance. Many consumer auto lease contracts actually require that higher levels of insurance must be held by the lessee. Almost all commercial rental and lease contracts require the lessee to hold levels of insurance significantly higher than the minimum level of financial responsibility.

Moreover, Graves/Boucher does not in any way protect a renting or leasing company from liability for its own negligence. Whether that negligence involves the maintenance of a vehicle or the decision to enter into a rental or lease contract with a specific individual or business, Graves/Boucher offers no protection from liability in these cases. But it does make the system of assigning liability much more fair.

As Americans, we believe that individuals must be held responsible for the consequences of what they do. But the doctrine of vicarious liability imposes liability on non-negligent car and truck renting and leasing companies, or their affiliates, regardless of fault. This doctrine dates back to the days of horse and buggies, when horse and buggy rental operators were supposed to know the personality of their horses.

On the state level, vicarious liability laws arbitrarily transferred liability from a negligent driver to the renting or leasing company—even though that company had no ability to prevent or foresee the accident. It is not fair to impose multimillion-dollar judgments on any entity, whether an individual or corporation, when they have done nothing wrong.

These laws weren't only unfair—they were unworkable in a country comprised of 50 states and an industry as diverse as the Nation that it serves.

Please keep in mind that the rented and lease fleet includes: automobiles leased to consumers, generally from 3 to 5 years; automobiles rented to consumers for periods of one day to 30 days; automobiles leased to businesses, generally for 3 years; trucks rented to consumers for periods of one to 30 days; and trucks leased to businesses, usually for one to 5 years.

There is one thing that all of these lease and rental transactions have in common: The leasing or renting company cannot control where the vehicle is operated—and in what manner the vehicle is operated—during the term of the lease and rental.

The fact is: We can't even prevent our customers from driving our vehicles across state lines. A company operating in Virginia cannot stop its customers and vehicles from traveling to Maryland, Pennsylvania, New Jersey or New York.

Before Congress preempted the state laws, when customers drove rental cars or trucks across state lines, they were covered by the laws of the states where they are driving. And these laws were a crazy-quilt of differing provisions and penalties.

Combined with our inability to control where and how our cars and trucks were driven, this patchwork of state vicarious liability laws, put non-negligent rental and leasing companies in an untenable situation. We were exposed to liabilities for which there was no best practice, nor any method for protection. We were vulnerable solely because the vehicles that we owned might have been involved in accidents after we gave up control of the vehicles to renters or lessees.

Such laws are not fair. And they destroy American jobs and diminish consumer choice.

In enacting Graves/Boucher, Congress took action 5 years ago to make sure that these laws no longer injure consumers, working Americans, and businesses large and small. You've heard the saying, "If it ain't broke, don't fix it." You fixed this already. So please don't fix it again.

We know what will happen if the existing law is reversed. Once again, non-negligent companies will be subject to huge claims for damages for which they are not responsible.

For instance, in 1993, two friends rented a car in New Jersey from Freedom River, Inc., a Philadelphia licensee of Budget Rent-A-Car Corporation. The rental agreement identified only the two renters as authorized drivers. But the wife of one of the renters drove the automobile and was involved in a single-car accident in New York. Her sister was seriously injured in the accident. An arbitrator applied New York law and found the defendant and Freedom River liable for \$3.75 million. This judgment was affirmed by the New Jersey Supreme Court.

In 1991, four British sailors rented a car from Alamo in Fort Lauderdale, Florida, to drive to Naples. While driving to Naples, the driver of the car fell asleep at the wheel. The car left the road and ended up in a canal. The driver and two passengers were killed. The fourth passenger was seriously injured. Alamo was found vicariously liable for the deaths and injuries due solely to the fact that it owned the vehicle. No negligence for the accident was attributed to Alamo, Alamo was ordered by a jury to pay the plaintiffs \$7.7 million. The jury award was affirmed on appeal.



What will happen to consumers if Graves/Boucher is reversed and non-negligent companies are once again subject to huge claims such as these for damages for which they are not responsible? Once again, renting and leasing customers are certain to pay higher costs to cover the actions of all negligent drivers. When state laws were in effect, some renting and leasing companies could not even find affordable insurance to cover them in the case of a vicarious liability claim.

Once again, consumers and businesses are certain to pay high commercial costs for transportation of goods. In the midst of the worst economy in 70 years or more, this puts American jobs at risk.

Once again, small businesses—the most vulnerable car and truck rental companies—are certain to run the risk of failure when hefty verdicts are assessed to pay for the actions of their at-fault renters. These business failures will take their toll in fewer choices for consumers and fewer jobs for workers.

For example, for 17 years, Sharon Faulkner owned a small car rental company in Albany, New York. Then, one day, she rented a car to a woman who agreed that she would be the only driver of the car. But the woman lent the car to her son, who, without Sharon Faulkner's knowledge, drove the car to New York City. There, he was involved in an accident in which he struck a pedestrian in a crosswalk. Under New York State's vicarious liability law, the injured person sued Sharon Faulkner's company, collecting substantial damages and driving her out of business.

She had not been negligent in any way. She could not have prevented the accident from occurring. But she was held liable and put out of business. (See attached letter from Sharon Faulkner.)

Small car rental companies aren't the only companies that will suffer if the existing law is reversed. Once again, auto manufacturers and leasing companies are certain to suffer severe losses when faced with frivolous lawsuits. For instance, before the Transportation Equity Act of 2005, many companies refused to lease in New York because businesses feared expensive and overly burdensome losses.

Our Nation has made a great investment in the survival of our domestic auto industry, and that investment is reaping rewards with the revival of the big three American companies. Why harm the American auto industry—and why jeopardize the jobs of American workers—in order to return to a dubious doctrine that originated in the era of the horse and buggy?

Congress has already debated this issue comprehensively and decided it correctly. Commencing in 1996, Congress reviewed vicarious liability laws, held hearings and considered many proposals. In 1998 Senators Rockefeller and Gordon introduced legislation (S. 2236) which included a vicarious liability provision. On Sept. 30, 1999, this subcommittee held a hearing on Senator McCain's vicarious liability legislation (S. 1130).

In 2005, the House of Representatives passed an amendment that preempted state vicarious liability laws applicable to vehicles, as part of the Highway Reauthorization legislation. This amendment was included in the final version that was enacted into law.

Since 2005, this law has been upheld in several Federal court decisions. (See attached summaries of court cases since Graves/Boucher.) For instance, in *Garcia v. Vanguard Car Rental USA, Inc.*, 540 F.3d 1242 (11th Cir. 2008), the Eleventh Circuit upheld the amendment's constitutionality because the statute has a substantial effect on interstate commerce. Let me quote from the court's decision:

“Congress rationally could have perceived strict vicarious liability for the acts of lessees as a burden on [the rental car] market. . . . The reason it could have done so is that the costs of strict vicarious liability against rental car companies are borne by someone, most likely the customers, owners, and creditors of rental car companies. If any costs are passed on to customers, rental cars . . . become more expensive, and interstate commerce is thereby inhibited. Moreover, if significant costs from vicarious liability are passed on to the owners of rental car firms, it is possible that such liability contributes to driving less-competitive firms out of the marketplace, or inhibits their entry into it, potentially reducing options for consumers.”

Let's not take what has been made right and make it wrong again. It is wrong to compel consumers across the Nation to pay higher rental rates for misguided vicarious liability laws which became obsolete with the invention of the automobile at the beginning of the last century. It is wrong to deprive consumers of the competition and lower rental rates that smaller operators can offer. It is wrong to return to the days when a car or truck rental company, even one operating outside of a vicarious liability state, could protect itself against exorbitant claims only by going out of business. And it is especially wrong to take actions that would have these consequences in the midst of a national economic crisis.

Thank you for the opportunity to present this testimony today and to speak up for fundamental fairness, for consumer choice, and for American jobs.

*Attachments: (1) List of members of the coalition supporting Graves/Boucher; (2) Letter from Sharon Faulkner; (3) Summaries of court cases since Graves/Boucher was enacted; (4) Statement from attorney Mark Perry.*

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**Companies and Organizations that Support the Graves/Boucher Provision**

Alamo Rent-A-Car	General Electric
Ally Financial, Inc.	General Motors Company
American Automotive Leasing Association	Hertz Corporation
American Car Rental Association	Honda Motor Company
American Financial Services Association	Mazda North American Operations
American Insurance Association	Motor & Equipment Manufacturers Association
American International Automobile Dealers Association	National Association of Manufacturers
American Tort Reform Association	National Automobile Dealers Association
American Trucking Association	National Car Rental
Association of International Automobile Manufacturers	Nissan North America
Avis Budget Group	Penske Truck Leasing Company
Chrysler Group LLC	Ryder System, Inc.
Dollar Thrifty Automotive Group	The Financial Services Roundtable
Enterprise Rent-A-Car	Truck Renting and Leasing Association
Ford Motor Company	U.S. Chamber Institute for Legal Reform
	U.S. Chamber of Commerce

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STATEMENT BY SHARON FAULKNER—September 24, 2010

Chairman JOHN D. ROCKEFELLER IV,  
Ranking Member KAY BAILEY HUTCHISON,  
Subcommittee Chairman MARK PRYOR,  
Subcommittee Ranking Member ROGER WICKER,  
Committee on Commerce, Science, and Transportation,  
Washington, DC.

Dear Chairman Rockefeller and Members of the Committee:

I represent one of the many business owners who were significantly impacted by state vicarious liability laws prior to Congress taking action in 2005. Therefore, I write in support of the provision included in the TEA-LU legislation that eliminated liability without fault for vehicle renting and leasing companies, and yet preserved the states' ability to enact insurance laws to protect consumers and their ability to sue companies if they are found to be negligent in the rental or leasing of vehicles.

For seventeen years, until 1997, I was a small business owner operating an independent car rental company in upstate New York. The company, Capitaland Rent a Car, was headquartered in Albany. During those years, thanks to the hard work of my employees and the loyalty of local customers, my company survived two recessions and fierce competition.

That situation changed one day in 1997 when I was notified that I and my company were being sued for an accident involving one of my rental cars that occurred over a year previously. Capitaland had rented a car in 1996 to a customer who possessed a valid New York driver's license. As part of Capitaland's standard rental agreement, the customer agreed that she would be the only driver of the car. My customer then loaned the car to her son who was an unauthorized driver under the rental agreement. The renter's son, without her knowledge, drove the car to New York City, where our car was involved in an accident in which a pedestrian was struck in a crosswalk. The injured person sued our company for the son's negligence in causing the accident.

This lawsuit caught me completely by surprise because when I checked my records, I found that the rental vehicle had been returned to us without any damage. As a result, I had no idea that an accident had ever occurred or that a person had ever been injured. Nevertheless, Capitaland was named as a codefendant in the lawsuit, which demanded enormous amounts of money to pay medical bills and compensate the injured person for his pain and suffering.

You might wonder how it was that my company was sued for the accident. We rented to a licensed driver, the renter loaned the car to an unauthorized driver. It was the unauthorized driver, a person that neither I nor any of my employees ever had a chance to meet, that caused the accident that injured the pedestrian. We weren't negligent in any way and I could not have prevented the accident from occurring. Therefore, how could I have been liable?

However, New York was one of a very small minority of states that held companies that rent motor vehicles liable for the negligence of persons who drive their vehicles whether that person is a customer or not. In these states a car rental company could have been assessed unlimited damages by a court under the legal doctrine of vicarious liability if one of its cars were involved in an accident in which the driver of the car was negligent. Simply because we owned the car, New York law held my company liable for the negligence of the renter.

For me this lawsuit was a final straw. At the time I was a mother with three small children; and Capitaland was our sole means of support. I found it incredible that I could lose everything I had worked to achieve for 17 years because of an accident for which I wasn't at fault. In effect, every time I rented a car to a customer I was putting my family's future on the line in the hope that the customer did not drive the car negligently and cause an accident.

So I made the decision to sell my company, and in the end, all of my former employees were laid off. The result: another independent car rental company disappeared in New York. But my company wasn't alone. Capitaland was one of over 300 car rental companies that closed in New York while vicarious liability laws were in place.

Vicarious liability for companies that rent or lease motor vehicles is unfair and contrary to one of our Nation's fundamental pillars of justice, that a person should be held liable only for harm that he or she causes or could have prevented in some way. TEA-LU legislation put a stop to this legal lottery, preempting state vicarious liability laws, but preserving the states' ability to enact insurance laws to protect consumers and consumers' ability to sue companies for their negligence in the rental or leasing of vehicles. It's too late to help my former company, but Congress can see to it that it doesn't happen again to someone else by preventing the vicarious liability doctrine from rearing its head once more.

Sincerely,

SHARON FAULKNER,  
*Former small business owner of Capitaland Rent a Car,*  
an independent car rental company in New York.

#### **Update on Judicial Action Involving Federal Law Eliminating Vicarious Liability (the Graves Amendment)**

Court cases continue to be filed following the enactment of Federal vicarious liability preemption on August 10, 2005, challenging the authority of the law known as the Graves Amendment. The following are brief summaries of the major cases in which courts have issued rulings. The Industry Council for Vehicle Renting and Leasing is tracking these and other court cases where application and/or interpretation of the Federal vicarious liability repeal statute is involved. TRALA and the Industry Council have filed amicus briefs on behalf of the industry in eight of these cases, seven of which have subsequently resulted in positive decisions (*Graham v. Dunkley and NILT, Inc.*, *Garcia v. Vanguard*, *Bechina v. Enterprise Leasing Company*, *Kumarsingh v. PV Holding and Avis Rent-A-Car System*, *Merchants Insurance Group v. Mitsubishi Motor Credit Association*, *Poole v. Enterprise Rent-A-Car*, and *Meyer vs. Enterprise Rent A Car*). One case in which TRALA and the Industry Council have filed amicus brief is still pending (*Vargas v. Enterprise Leasing Company*).

*Merchants Insurance Group v. Mitsubishi Motor Credit Association*—U.S. District Court, Eastern District of New York

#### Positive Decision

On December 16, 2009, the U.S. Court of Appeals for the Second Circuit reversed an earlier decision of the United States District Court for the Eastern District of New York by vacating the District Court's judgment. The case was an appeal by Merchant's Insurance Group to the U.S. Court of Appeals, and on March 3, 2008, TRALA filed an amicus brief supporting Mitsubishi Motor Credit Association (MMCA) and arguing that the Graves Amendment preempted New York State's vicarious liability law, as the District Court had previously ruled. However, the Court

of Appeals ruled that the original lawsuit in the case commenced before the Graves Amendment became Federal law, so the preemption should not apply to this case. U.S. Court of Appeals Decision

The U.S. Court of Appeal's ruling vacated the ruling by the District Court for the Eastern District of New York, which had ruled in favor of MMCA on September 25, 2007, by granting their motion for summary judgment based on the preemptive nature of the Graves Amendment (49 U.S.C. 30106) over New York vicarious liability law. In granting MMCA's motion for summary judgment, the District Court stated the "courts have consistently held that the Graves Amendment prohibits states from imposing vicarious liability on owner-lessors such as defendants where the lessor is not negligent." Addressing the constitutionality of the Federal statute, the court stated that "to date, only one court has found the Graves Amendment unconstitutional . . . *Graham* [v. *Dunkley*], however, has not been followed by any other court. To the contrary, a number of courts have explicitly found the statute constitutional."

It is important to note that even though the U.S. Court of Appeals' ruling reversed the District Court ruling that affirmed the Graves Amendment, the Court of Appeal's decision does not challenge the authority of the Graves Amendment. In the ruling the Court of Appeals specifically stated that "In the instant case, there is no dispute that, if Merchant's suit against MMCA was commenced after the Graves Amendment's effective date, the Graves Amendment preempts New York law and precludes Merchants' claim."

*Meyer vs. Enterprise Rent A Car*—Minnesota Court of Appeals

Positive Decision—Positive Ruling on Appeal

Positive Decision in Minnesota Supreme Court

On January 20, 2009, the Minnesota Court of Appeals affirmed an earlier decision of the Otter Tail County District Court of Minnesota which granted Enterprise's motion for summary judgment in favor of Enterprise in *Meyer v. Enterprise Rent-A-Car*. In the Minnesota Court of Appeals, the judge rejected Meyer's contention that Minnesota Statutes § 169.09, subd. 5a, and Minnesota Statutes § 65B.49 subd. 5a(i)(2), which established caps on vicarious liability, were preserved by the Graves Amendment's savings clause which exempts "financial responsibility laws" from Federal preemption. The Court of Appeals affirmed the decision of the District Court ruling that the existing statutes that established caps on vicarious liability are not financial responsibility laws and are not preserved by the Graves Amendment, the Federal law codified at 49 U.S.C. § 30106.

In a subsequent appeal the Minnesota Supreme Court issued a ruling that upheld the decision of the Minnesota Court of Appeals on January 14, 2010. In its ruling, the Supreme Court stated that "We conclude that there is nothing ambiguous about the statute. Minn. Stat. § 169.09, subd. 5a, is not a financial responsibility law that limits, or conditions liability of the rental-vehicle owner for failure to meet insurance-like requirements or liability insurance requirements within the meaning of the (b)(2) savings clause . . . Because there are no financial responsibility laws incorporated into subdivision 5a, we conclude that the statute does not fall within the (b)(2) savings clause."

*Vargas v. Enterprise Leasing Company*—Fourth District Court of Appeal of the State of Florida

Positive Decision—Positive Ruling on Appeal

Appeal Pending in Florida Supreme Court

On October 31, 2008, the Florida District Court of Appeal for the Fourth District affirmed an earlier trial court decision granting a motion for summary judgment in favor of Enterprise Leasing Company in the *Vargas v. Enterprise* case. The motion was granted pursuant to Enterprise's claim that it could not be held vicariously liable due to the Federal law known as the Graves Amendment (49 U.S.C. 30106). The plaintiff contended that Florida Statute section 324.021(9)(b)2, which sets caps on vicarious liability, was preserved by the Graves Amendment's provision that exempts "financial responsibility laws" from the Federal law's pre-emption. The appellate court stated in its decision that "section 324.031(9)(b)2 is not the type of law that Congress intended to exclude from preemption." The court went on further to say that the "Florida legislature's endorsement of and limitations on the vicarious liability imposed under the dangerous instrumentality doctrine is not a financial responsibility requirement."

*Vanguard Car Rental USA, Inc. v. Huchon*—U.S. District Court, Southern District of Florida

Negative Decision—Positive Ruling Compelled by U.S. Court of Appeals for 11th Circuit

On September 14, 2007, the United States District Court for the Southern District of Florida denied both a motion (by Federal court defendant Huchon) to dismiss Vanguard's Petition for Declaratory Judgment and a motion (by Federal court plaintiff Vanguard) for Summary Judgment.

The court denied Huchon's motion to dismiss based on several provisions of law not directly related to vicarious liability or 49 U.S.C. 30106 (the Graves Amendment). In considering Vanguard's Petition for Declaratory Judgment, the court ruled that Huchon's claim was not being made pursuant to Florida statute limiting liability of companies renting a vehicle for less than one year (Florida Statute Section 324.021). Instead the court ruled that the claim was being made pursuant to Florida's Doctrine of Dangerous Instrumentality. Therefore, the court declared that "the only remaining issue is whether [the Graves Amendment] is constitutional."

The court cited its disagreement with the March 5, 2007 ruling by the U.S. District Court for the Middle District of Florida in the *Garcia v. Vanguard* case in which the Graves Amendment was found to be constitutional under three separate tests of the U.S. Congress' authority under the Commerce Clause. The court in *Vanguard v. Huchon* held that "the direct language of 49 U.S.C. 30106(b) regulates tort liability and does not directly regulate either channels of interstate commerce or the use of those channels." Further, the court ruled that the Graves Amendment "does not regulate the use of instrumentalities of interstate commerce." The court uses these findings to rule that "Congress exceeded the authority granted by the Commerce Clause when it enacted 49 U.S.C. 30106." Based on this conclusion, the court denied Vanguard's Petition for Declaratory Judgment.

On March 12, 2009, The United States District Court for the Southern District of Florida, reversed its September 14, 2007 decision and ruled in favor of Vanguard Car Rental. In its Final Judgment, the Federal court ruled that the "vicarious liability claim is prohibited by the Graves Amendment . . . This case remains closed [and] all pending motions are denied as moot." The court was compelled to reverse its earlier decision by the August 19, 2008 ruling of the U.S. Court of Appeals for the 11th Circuit in *Garcia v. Vanguard*. In that decision, the Graves Amendment was determined to be constitutional under all three categories of Congress' powers under the Commerce Clause. The Federal appellate court in *Garcia* also ruled that Florida's statutes setting caps on vicarious liability were not financial responsibility statutes preserved by the Graves Amendment and were pre-empted by the Federal law. All Federal District courts in Alabama, Florida and Georgia must follow the U.S. Court of Appeals decision in *Garcia v. Vanguard*.

*Graham v. Dunkley and Nilt, Inc.*—Supreme Court—Queens County, New York

Negative Decision—Positive Ruling on Appeal

Positive Ruling by New York Court of Appeals

On September 11, 2006, the Supreme Court in Queens County, New York denied a motion made by Nissan Infiniti, LT in *Graham v. Dunkley and Nilt, Inc.* to dismiss a vicarious liability claim. The motion to dismiss was based on the Federal statute (49 U.S.C. 30106) that prohibits states from imposing liability solely on the basis of ownership. Judge Thomas Polizzi, in denying the motion, held that the Federal statute "is unconstitutional exercise of congressional authority under the Commerce Clause of the United States Constitution, Article I, Section 8." The action in *Graham v. Dunkley and Nilt, Inc.* was the first case in which a court has ruled against the constitutionality of the Federal statute.

The trial court decision in *Graham v. Dunkley* was reversed by the Appellate Division, Second Judicial Department of the Supreme Court on February 1, 2008. In its decision, the appellate court stated that "we agree with the weight of precedent that the Graves Amendment was a constitutional exercise of Congressional power pursuant to the Commerce Clause of the United States Constitution." The appellate court declared unequivocally that "actions against rental and leasing companies based solely on vicarious liability may no longer be maintained."

On April 29, 2008, New York State's highest court, the NY Court of Appeals, dismissed the plaintiff's appeal of the lower appellate court decision upholding the Graves Amendment. This action strongly affirms the authority of the Graves Amendment to preempt New York's unlimited vicarious liability law.

*Bechina v. Enterprise Leasing Company*—Circuit Court of the 11th Judicial Circuit—Miami Dade County, Florida

Positive Decision—Positive Ruling on Appeal

On April 24, 2007, the court granted a Motion for Summary Judgment made by defendant Enterprise Leasing Company. In granting the motion, the court agreed with the Enterprise arguments detailing the preemptive authority of the 49 U.S.C. 30106 (the Graves Amendment). The court also agreed with the defendant that Florida's statute capping vicarious liability involving motor vehicles rented for less than one year (Section 324.021) is not a financial responsibility statute preserved by the Graves Amendment language.

Florida's Third District Court of Appeals on December 12, 2007, upheld the preemptive authority of the Graves Amendment (49 U.S.C. 30106) by affirming the 11th Circuit Court decision. In its opinion, the appellate court held that "motor vehicle leasing transactions unquestionably affect the channels of interstate commerce, the instrumentalities of interstate commerce, and intrastate activities substantially related to interstate commerce."

*Traitouros v. Wheels, Inc., Hoffman, La Roche and The La Roche Group*—Supreme Court, Nassau County, New York

Positive Decision

On October 23, 2007, the Supreme Court, Nassau County, New York, granted defendant Wheels, Inc.'s motion to dismiss the plaintiff's claim of vicarious liability pursuant to New York's Vehicle Traffic Law Section 388. In response to the defendant's motion based on the preemptive authority of Graves Amendment (49 U.S.C. 30106), the plaintiff cited the *Graham v. Dunkley* decision as an example that the New York Courts "have not had one view on this issue." In its order granting the motion to dismiss, the court stated that "this Court does not share the view held only by the *Graham v. Dunkley Court*. Rather, for the purposes of deciding this motion, the Federal statute is constitutional."

*Deopersad Kumarsingh and Rosalie Kumarsingh, his Wife v. PV Holding Corporation and Avis Rent A Car System, Inc.*—Circuit Court of the 11th Judicial Circuit—Miami-Dade County, Florida

Positive Decision—Positive Ruling on Appeal

Positive Ruling by Florida Supreme Court

On October 13, 2006, citing the Graves Amendment's preemption of state vicarious liability laws, Miami-Dade County Circuit Judge Michael A. Genden rendered a final judgment for the defendant ruling that they cannot be held vicariously liable for damages caused by their customer operating a rented vehicle. In his ruling, Judge Genden stated "the 'Graves Amendment' has abrogated vicarious liability of automobile lessors in the state of Florida effective August 10, 2005 and, therefore, . . . the defendants cannot be vicariously liable to plaintiffs . . ." Judge Genden went on to state that "the maximum liability for short term automobile lessors in section 324.021(9) Fla. Stat. are 'caps' on vicarious liability and are not 'financial responsibility' requirements for the privilege of owning/operating a motor vehicle in the state of Florida."

On October 3, 2007, Florida's Third District Court of Appeals ruled to affirm the October 13, 2006 decision of the Circuit Court of the 11th Judicial Circuit—Miami-Dade County. In its opinion, the Court of Appeals stated that "the trial court correctly concluded that the Graves Amendment, by its clear and unambiguous wording, supercedes and abolishes state vicarious liability laws."

On May 19, 2008, the State of Florida's highest court, the Florida Supreme Court, denied the plaintiff's request to consider another appeal of the two lower decisions upholding the authority of the Graves Amendment.

*Castillo v. Bradley and U-Haul Company of Oregon*—Supreme Court, Kings County, New York

Positive Decision

On October 2, 2007, the Supreme Court, Kings County, New York granted defendant U-Haul's motion to dismiss plaintiff's vicarious liability claim. In granting the motion, the court affirmed the preemptive authority of Federal statute 49 U.S.C. 30106 and the constitutionality of the law.

In its decision, the court stated that "there is ample authority to the effect that the "Graves Amendment" has preempted" New York's vicarious liability law. The

court also states that “the constitutionality of the statute has been upheld in two out of the three Federal court cases found to have considered the question” calling those cases “persuasive and controlling.”

*Seymour v. Penske Truck Leasing Company*—U.S. District Court, Southern District of Georgia, Savannah Division

Positive Decision

On July 30, 2007, the U.S. District Court, Southern District of Georgia, Savannah Division, granted defendant Penske Truck Leasing Company’s motion for summary judgment against the plaintiff’s claim for damages. The court found that Penske was not liable for the actions of a driver not authorized to operate the vehicle under the rental agreement. The Federal court also found that the Graves Amendment is a constitutional Federal statute. In its decision, the court states that it has “no trouble concluding that 49 U.S.C. 30106 . . . regulates commercial transactions (rentals or leases) involving instrumentalities of interstate commerce (motor vehicles—“the quintessential instrumentalities of modern interstate commerce”).

*Iljazi v. Dugre, et al.*, (*Enterprise Rent-A-Car*)—Superior Court, Waterbury, Connecticut

Positive Decision

On April 13, the Superior Court of Connecticut Waterbury District granted defendant Enterprise Rent-A-Car’s motion to strike the plaintiff’s vicarious liability count against the company. Enterprise based its motion on the “Graves Amendment’s” preemption of Connecticut’s vicarious liability statute. The court cited *Davis v. Illama* and *Dorsey v. Beverly, supra* in its decision to strike the vicarious liability count against Enterprise.

The plaintiff filed an objection to the motion to strike the count on the grounds that the Graves Amendment violates the Commerce Clause of the U.S. Constitution. The plaintiff cited the decision of the New York Supreme Court, Queens County in *Graham v. Dunkley* as authority for its claim. In response to the objection, the court quotes from a 1989 decision in *Bottone v. Westport* . . . “(I)n passing upon the constitutionality of a legislative act, we will make every presumption and intendment in favor of its validity . . . The party challenging a statute’s constitutionality has a heavy burden of proof; the unconstitutionality must be proven beyond all reasonable doubt.” The court goes on to state that “beyond offering the New York lower court decision as authority for the unconstitutionality of the Graves Amendment, the plaintiff has offered no additional case law or argument and accordingly, the plaintiff has not sustained its burden of proving that the statute is unconstitutional.”

*Garcia v. Vanguard Car Rental USA, Inc.*—U.S. District Court, Middle District of Florida, Ocala Division

Positive Decision—Positive Ruling on Appeal

March 5, 2007, the United States District Court, Middle District of Florida, Ocala Division ruled that Florida Statute 324.021(9)(b)(2), setting caps on vicarious liability of short-term lessors, is not a “financial responsibility law” protected 49 U.S.C. 30106(b). The court explained that “the Florida Statute in question does not create insurance standards for entities that register and operate motor vehicles within Florida.” The court went on to state that its “analysis drives the conclusion that vicarious liability of motor vehicle lessors under Florida’s dangerous instrumentality doctrine is now preempted by Federal law. Consequently, Fla. Stat. 324.021(9)(b)(2) also is preempted.”

The Federal court also finds that “there can be no dispute that leased vehicles routinely travel between states” and that “the Graves Amendment is constitutional under the first category of Congress’ Commerce Clause powers.” The Court “also finds that the Graves Amendment is constitutional under the second category of Congress’ Commerce Clause powers because the statute regulates the leasing and operating of motor vehicles which are the quintessential instrumentalities of modern interstate commerce.” The Court further finds that “the Graves Amendment . . . is constitutional under the third category—regulating intrastate activities that substantially affect interstate commerce.”

On August 19, 2008, the United States Court of Appeals for the 11th Circuit affirmed the U.S. District Court decision.

*Jones v. Bill, et al.*—Supreme Court of the State of New York Appellate Division:  
Second Judicial Department

Positive Decision

On November 28, 2006, the Second Judicial Department of the Supreme Court of New York Appellate Division upheld an earlier decision of the Supreme Court, Dutchess County to dismiss a complaint against the vehicle lessor DCFS Trust based on 49 U.S.C. 30106, commonly known as the “Graves Amendment.” In its decision to uphold the trial court decision, the court explained that the “Graves Amendment abolished vicarious liability of long-term automobile lessors based solely on ownership.” Furthermore, the court noted that the “Graves Amendment is applicable to any action commenced on or after the date of enactment,” August 10, 2005. Though the initial suit against defendant and vehicle operator Jessica Bill was filed on August 8, 2005, DCFS Trust was not added as a defendant until an amended filing on November 1, 2005. The court rejected as “without merit” the plaintiff’s assertion that its claim against DCFS is maintainable under the relation-back doctrine.

The Second Judicial Department of the Supreme Court of New York Appellate Division is the same court where the appeal of the *Graham v. Dunkley and NILT, Inc.* decision declaring 49 U.S.C. 30106 as unconstitutional is currently pending.

*Poole v. Enterprise Leasing Company of Orlando*—18th District Circuit Court—  
Brevard County, Florida

Negative Decision—Positive Ruling on Motion for Summary Judgment

On January 19, 2006, Judge T. Mitchell Barlow denied Enterprise’s motion to dismiss this case and ruled that Florida’s statute setting caps on the vicarious liability of short-term lessors (Florida Statute 324.021 (9)(b)(2)) is a financial responsibility law and falls under the provision of the Federal law preserving a state’s right to impose financial responsibility laws required for registering and operating a motor vehicle (49 U.S.C. 30106(b)). During the hearing, there was some discussion of the constitutionality of the Federal law with regard to its effective date and the plaintiff’s right to due process of law. The judge did not rule on this question and asked counsel on both sides to refrain from extensive debate on this issue as he felt he could make a ruling based only on the question of financial responsibility laws. This suit was filed on August 10, 2005, the day Federal vicarious liability preemption was enacted. The plaintiff’s case was argued by Andre Mura, Senior Litigation Counsel for the Association of Trial Lawyers of America’s Center for Constitutional Litigation.

*Davis v. Iлама et al. (We Rent Minivans)*—Superior Court—Waterbury, Connecticut

Positive Decision

On March 14, 2006, the Superior Court of Connecticut granted We Rent Minivans’ motion to strike two counts against it that were based on liability solely due to ownership of the vehicle. In one count, the plaintiff claimed We Rent Minivans was liable by virtue of giving the defendant permission to operate one of its vehicles, with no allegation of negligence against We Rent Minivans. The second count claimed liability pursuant to Connecticut’s vicarious liability statute. The court bases its decision to grant the defendant’s motions to strike the two counts on the Federal preemption statute (49 U.S.C. Section 30106) and on the decisions in *Infante v. U-Haul of Florida* and *Piche v. Nugent et al. (Enterprise Rent-A-Car)*.

*Infante v. U-Haul of Florida*—Supreme Court—Queens County, New York

Positive Decision

On January 18, 2006, Judge Augustus Agate granted U-Haul’s motion to dismiss this case ruling U-Haul of Florida was not the titled owner of the vehicle involved in the claim. However, the judge went further in his decision to clarify that regardless of the issue of the defendant not owning the vehicle, the plaintiff’s claim was invalid based upon the enactment of the “Graves Amendment” prohibiting vicarious liability against owners of rented and leased vehicles and its preemption of state laws, including New York’s, that previously permitted it. According to U-Haul, this case is not expected to be appealed.



*Piche v. Nugent et al. (Enterprise Rent-A-Car)*—U.S. District Court—District of Maine

Positive Decision

On September 30, 2005, Judge Margaret J. Kravchuk affirmed the effectiveness of Federal law (49 U.S.C. Section 30106) preempting state vicarious liability statutes, even though this case was filed prior to enactment of the Federal law and was not affected by it. The judge denied Enterprise’s motion for summary judgment centering on whether the law of Maine, which includes statutory vicarious liability, or the law of New Hampshire which does not, would be applicable to this case. In her decision, the judge stated that the question at hand “is not a question likely to repeat itself in the future. On August 10, 2005, President Bush signed into law . . . SAFETEA–LU.” She further explains that the “law amends U.S. Code Title 49, Chapter 301 to preempt state statutes that impose vicarious liability on rental car companies for the negligence of their renters . . . Thus, the long-term policy debate has been resolved by the Federal Government.”

To: Truck Renting and Leasing Association (TRALA)  
 From: Mark A. Perry, Gibson, Dunn & Crutcher LLP  
 Date: September 24, 2010  
 Re: Historical and Legal Analysis of the Graves Amendment  
 Client: T 26297–00082

In 2005, Congress enacted the Graves Amendment as part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109–59, 119 Stat. 1144 (2005). The Amendment provides, in relevant part, that “[a]n owner of a motor vehicle that rents or leases the vehicle to a person . . . shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle . . . for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease,” provided that “there is no negligence or criminal wrongdoing on the part of the owner.” 49 U.S.C. § 30106(a), (a)(2).

The Amendment is but one of the most recent in a long line of statutes—dating back to the dawn of the Republic—in which Congress has regulated the instrumentalities of interstate commerce by creating a uniform Federal standard. In each instance, Congress determined that a nationwide rule would benefit interstate commerce by lifting local restrictions and providing participants in the industry (such as rental car or truck companies) with certainty about the governing law. Also, in many cases, Congress determined that it was in the Nation’s best interest to reduce or eliminate certain forms of liability, where liability would be unfair or place unnecessary burdens on interstate commerce.

The Graves Amendment serves both of these salutary purposes. First, it establishes a Federal rule of liability, which allows owners of motor vehicles to run their businesses and use the Nation’s roads free from the costs of identifying and complying with a patchwork of state-by-state regulation. Second, it eradicated a particularly unfair and onerous form of liability—vicarious liability for acts of negligent drivers that the motor vehicle owner could not have anticipated and were beyond its control.

Congress did not make this policy decision lightly; rather, members of both houses explained that the statute struck the correct balance between Federal and state regulation, and appropriately limited liability to cases where the motor vehicle owner was actually at fault. In short, Congress considered these issues the first time and got it right; it need not revisit the issue now.

## Discussion

### I. Throughout Our Nation’s History, Congress Has Regulated Modes Of Transportation—including By Displacing State Rules Of Conduct And Liability

Under Article I, Section 8, of the U.S. Constitution, Congress has the power to “regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes.” The same section provides Congress with the authority to “make all Laws which shall be necessary and proper for carrying into Execution” its power over interstate commerce. Finally, the Supremacy Clause provides that “the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the contrary notwithstanding.” U.S. Const. art. VI.

From the time of the Founding, Congress's commerce power has been understood to include the authority "to regulate and protect the instrumentalities of interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558 (1995) (emphasis added). That power, coupled with the power to displace state laws pursuant to the Supremacy Clause, necessarily extends to the removal of state burdens on modes of transportation. As shown below, Congress has often exercised these powers to facilitate interstate commerce by imposing a uniform Federal rule.

*Ships and Waterways.* In the Eighteenth Century, when the Constitution was drafted and ratified, the navigable waters were the principal channels of interstate commerce. The First Congress, therefore, enacted several measures that promoted interstate commerce by removing obstacles to the flow of water transportation.<sup>1</sup> In a famous early example, *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824), the Supreme Court upheld the Federal Government's power to license steamboats to navigate on the Hudson River—even though New York had enacted a local prohibition against such navigation.

Congress continued to exercise power over the waterways throughout our history. Notably, in 1851, Congress enacted a statute similar to the Graves Amendment that limited the liability of ship owners for losses that were not the owner's fault. Act of Mar. 3, 1851, ch. 43, 9 Stat. 635 (1851). In two cases upholding this law from constitutional challenge, the Supreme Court remarked that it was appropriate for the Federal Government to limit liability in this way: "Navigation on the high seas," the Court stated, "is necessarily national in its character." *Lord v. Steamship Co.*, 102 U.S. 541, 544 (1881). The Court further noted that, if the law were administered fairly, "with the view of giving to ship owners the full benefit of the immunities intended to be secured by it, the encouragement it will afford to commercial operations . . . will be of the [highest] importance." *Providence & N.Y. Steamship Co. v. Hill Mfg. Co.*, 109 U.S. 578, 589 (1883). The Graves Amendment today plays a similar beneficial role—it encourages interstate commerce by eliminating a particularly onerous form of state liability.

*Trains and Railways.* In the Nineteenth Century, railroads gradually replaced waterways as the principal channels of interstate commerce. Federal regulation of the railways soon followed.<sup>2</sup> As was true in the shipping industry, the railroad statutes "were passed under the power vested in Congress to regulate commerce among the several States, and were designed to remove trammels upon transportation between different States, which had previously existed, and to prevent the creation of such trammels in [the] future." *R.R. Co. v. Richmond*, 86 U.S. 584, 589 (1873).<sup>3</sup>

*Airplanes.* In the Twentieth Century, Congress began to regulate still newer means of transportation, including airplanes. Indeed, because of the unique nature of air travel, Federal regulation is necessarily pervasive and leaves even less room for state legislatures to experiment and regulate. See *Nw. Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (1944) (Jackson, J., concurring) ("Air as an element in which to navigate is even more inevitably Federalized by the commerce clause than is navigable water"). Accordingly, "Congress has recognized the national responsibility for regulating air commerce," and "[f]ederal control is intensive and exclusive." *Id.* For example, in the General Aviation Revitalization Act of 1994, 49 U.S.C. § 40101, Congress limited the exposure of aircraft manufacturers to state tort liability. So too with the Graves Amendment.

*Cars and Roadways.* Motor vehicles, of course, are the primary modern means of travel. From the very start of the automobile industry, Congress has Federalized the regulation of the ownership and operation of motor vehicles. Throughout the indus-

<sup>1</sup> See, e.g., Act of Sept. 1, 1789, ch. 11, 1 Stat. 55 (1789) (providing for registration or enrollment of ships belonging to U.S. citizens); Act of July 20, 1790, ch. 29, 1 Stat. 131, 131–35 (1790) (guaranteeing merchant seamen prompt payment of wages, and adequate medicine and food); Act of Mar. 2, 1819, ch. 46, 3 Stat. 488 (1819) (limiting number of passengers that could be carried on ships).

<sup>2</sup> See Act of June 15, 1866, ch. 124, 14 Stat. 66 (1866) (authorizing all steam-based railroad companies to carry passengers interstate); Act of July 25, 1866, ch. 246, 14 Stat. 244 (1866) (permitting construction of bridges over the Mississippi River).

<sup>3</sup> Indeed, in the Nineteenth Century, the Supreme Court often held that, even in the absence of Federal legislation, the commerce power of *its own force* displaced state laws that burdened the instrumentalities of commerce—such as ships or railroads. For example, the Supreme Court struck down state fees on ship captains for passengers brought into a state, invalidated state laws giving port officials the exclusive right to inspect incoming ships, and declared unconstitutional state laws forbidding the regulation of railroad rates. See David P. Currie, *The Constitution in the Supreme Court: The First Hundred Years 227–28, 405, 409, 412* (1985). Likewise, in *Wabash, St. Louis & Pac. Railway Co. v. Illinois*, 118 U.S. 557 (1886), the Court held that the commerce power prohibited states from enacting a law that regulated the rates for railroad journeys within a state's borders. The reason for these decisions was the hindrance that state laws imposed on the instrumentalities of commerce.

try's history, it has been well-established that state regulation of motor vehicles "is . . . subordinate to the will of Congress" under the Supremacy Clause, and can only stand "[i]n the absence of national legislation covering the subject." *Hendrick v. Maryland*, 235 U.S. 610, 622–23 (1915).

For example, in *Buck v. Kuykendall*, 267 U.S. 307 (1925), and *George W. Bush & Sons Co. v. Maloy*, 267 U.S. 317 (1925), the Court invalidated state laws that required operators of common carriers conducting business in interstate commerce to obtain a special license to operate within the state. The Court held, among other things, that the legislation conflicted with the Federal Highway Act, through which Congress had intended "that state highways shall be open to interstate commerce." *Bush*, 267 U.S. at 324.

Later, the Motor Carrier Act of 1935 inaugurated comprehensive congressional regulation of safety standards for motor vehicles. It required motor carriers to maintain continuous and adequate service and keep sufficient records; established maximum hours-of-service requirements; and regulated rates. See Clyde B. Aitchison, *The Evolution of the Interstate Commerce Act: 1887–1937*, 5 Geo. Wash. L. Rev. 289, 394–99 (1937). Federal motor vehicle regulation has become even more pervasive since then. In 1966, Congress enacted the National Traffic and Motor Vehicle Safety Act of 1966 and the Highway Safety Act of 1966, Pub. L. No. 89–563, 80 Stat. 718 (1966); Pub. L. No. 89–564, 80 Stat. 731 (1966), which created the predecessor entities to the National Highway Traffic Safety Administration. Those enactments established, among other things, extensive Federal regulation of safety standards for motor vehicles and highways; today, their successor statutes permit the Federal Government to dictate such criteria as, for example, the length and width limits for vehicles. See, e.g., 49 U.S.C. §31111.

As was true for ships, trains, and planes, Congress exercised its authority over the Nation's highways to displace inconsistent state standards. In 1987, for example, Congress enacted a law excluding certain evidence from admission in state trials that state governments were required to collect to comply with Federal laws designed to identify and evaluate hazardous conditions on federally funded roads. Although the Federal law supplanted state rules of evidence, the Supreme Court upheld it from constitutional challenge, finding it reasonable for Congress to believe that exclusion of such evidence "would result in more diligent efforts to collect the relevant information, more candid discussions of hazardous locations, better informed decisionmaking, and, ultimately, greater safety on our Nation's roads." *Pierce County v. Guillen*, 537 U.S. 129, 147 (2003).

The Graves Amendment, of course, is yet another recent example of Congress adopting a Federal standard to govern participants in the transportation industry—owners of motor vehicles—and displace burdensome state laws. As it did with earlier statutes, Congress carefully weighed the benefits and drawbacks of Federal legislation in this area, and determined that eliminating vicarious liability, while preserving liability for fault, was in the Nation's best interests. It was by no means an unusual exercise of Congressional power. To the contrary, it was a paradigmatic example of Congress's authority to facilitate interstate commerce by adopting a fair, nationwide rule.

## II. The Courts Have Rejected Challenges To The Graves Amendment

The appellate courts have consistently rejected constitutional challenges to the Graves Amendment, recognizing that the Amendment falls squarely within Congress's power under the Commerce Clause. The leading case is *Garcia v. Vanguard Car Rental USA, Inc.*, 540 F.3d 1242 (11th Cir. 2008).

*Garcia* was a Florida wrongful death suit, brought on behalf of car accident victims against Vanguard, which leased the vehicle to the driver who caused the accident. See *id.* at 1245. Vanguard, which admittedly was not at fault for the accident, successfully argued that the Graves Amendment precluded holding Vanguard vicariously liable for the alleged negligence of the driver. See *id.* Plaintiffs in turn argued that the Amendment could not be enforced, because it supposedly exceeded Congress's power under the Commerce Clause. See *id.* at 1249.

The Eleventh Circuit rejected plaintiffs' challenge and upheld the Amendment's constitutionality, because the statute has a substantial effect on interstate commerce. See *id.* at 1253. The Court concluded that Congress acted reasonably in enacting the Graves Amendment to reduce burdens on interstate commerce:

Congress rationally could have perceived strict vicarious liability for the acts of lessees as a burden on [the rental car] market. . . . The reason it could have done so is that the costs of strict vicarious liability against rental car companies are borne by someone, most likely the customers, owners, and creditors of rental car companies. If any costs are passed on to customers, rental cars . . . become more expensive, and interstate commerce is thereby inhibited. Moreover, if significant

costs from vicarious liability are passed on to the owners of rental car firms, it is possible that such liability contributes to driving less-competitive firms out of the marketplace, or inhibits their entry into it, potentially reducing options for consumers.

*Id.* at 1253.

These observations echoed the statute's legislative history, which noted Congress's concern with litigation costs driving rental car companies out of the market or forcing them to pass costs on to their consumers. *See id.* at 1253 n.6. As explained above, the statute was also consistent with Congress's longstanding role in regulating modes of transportation and eliminating burdens on interstate commerce. For these reasons, many Federal and state courts have agreed with Garcia, and upheld the Graves Amendment from constitutional attack.<sup>4</sup>

### III. Congress Adopted The Graves Amendment After Due Deliberation, And Had Sound Policy Reasons For Doing So

As an appropriate use of Congress's power, the Graves Amendment is a carefully calibrated policy decision whose purpose was to limit the liability of motor vehicle owners to those cases where the owner is actually at fault. As noted in *Garcia*, the legislative history of the Amendment confirms that Congress made a conscious decision to create a Federal rule of liability that would lower litigation costs for vehicle rental companies and to differentiate between meritorious and frivolous lawsuits.

Several Members of Congress explained that the purpose of the Graves Amendment was to "establish a fair national standard for liability." 151 Cong. Rec. H1034-01 (daily ed. Mar. 9, 2005) (statement of Rep. Blunt), 2005 WL 556038 (Cong. Rec. 2005), at \*H1200; *see also id.* at \*H1202 (statement of Rep. Smith) (purpose of Graves Amendment is to create a "national standard"). Moreover, Members of Congress from both houses, including the bill's sponsor, explained that they were adopting a rule that was fair both to motor vehicle owners and accident victims: It would eliminate liability for actions where the motor vehicle operator was not actually at fault, but leave state actions for negligence (*e.g.*, negligent maintenance) intact. *See id.* at \*H1200 (statement of Rep. Graves) ("I want to emphasize, I want to be very clear about this, that this provision will not allow car and truck renting and leasing companies to escape liability if they are at fault"); *id.* at \*H1202 (statement of Rep. Smith) ("The Graves[ ] amendment . . . provide[s] that vehicle rental companies can only be held liable in situations where they have actually been negligent. This amendment in no way lets companies off the hook when they have been negligent"); 151 Cong. Rec. S5433-03 (daily ed. May 18, 2005) (statement of Sen. Santorum), 2005 WL 1173802, at \*S5434 ("This provision is a common sense reform that holds vehicle operators accountable for their own actions and does not unfairly punish owners who have done nothing wrong").

Congress was also aware that vicarious liability could have a deleterious effect on the transportation industry and the American economy as a whole. Therefore, it acted accordingly to remove this burden on interstate commerce. As one Senator noted, "[t]hrough only a few States enforce laws that threaten nonnegligent companies with unlimited vicarious liability, they affect consumers and businesses from all 50 States." 151 Cong. Rec. S5433-03 (statement of Sen. Santorum), 2005 WL 1173802, at \*S5433. "Vicarious liability means higher consumer costs in acquiring vehicles and buying insurance and means higher commercial costs for the transportation of goods. Left unreformed, these laws could have a devastating effect on an increasing number of small businesses that have done nothing wrong." *Id.* As explained above, this reasoning is consistent with Congress's historical and vital role in regulating the modes of transportation and removing state impediments to the flow of interstate commerce.

Finally, Congress plainly did not anticipate that states would have *no* role to play in holding motor vehicle owners accountable for harm caused by their vehicles. To the contrary, as noted above, states could still impose liability when the vehicle owner acted negligently. Moreover, the Graves Amendment expressly saves from preemption any state law that, for example, "impos[es] financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating" the vehicle. 49 U.S.C. § 30106(b)(1). "Under this provision, States would continue to determine the level of compensation available for accident victims by setting minimum insurance coverage requirements for every vehicle." 151 Cong.

<sup>4</sup>*See also Dupuis v. Vanguard Car Rental USA, Inc.*, 510 F. Supp. 2d 980 (M.D. Fla. 2007); *Jasman v. DTG Operations, Inc.*, 533 F. Supp. 2d 753 (W.D. Mich. 2008); *Flagler v. Budget Rent A Car Sys., Inc.*, 538 F. Supp. 2d 557 (E.D.N.Y. 2008); *Seymour v. Penske Truck Leasing Co.*, No. 407CV015, 2007 WL 2212609 (S. D. Ga. July 30, 2007); *Graham v. Dunkley*, 852 N.Y.S. 2d 169 (App. Div. 2008).

Rec. S5433-03 (statement of Sen. Santorum), 2005 WL 1173802, at \*S5433. Thus, the Graves Amendment envisions a critical role for the states to play in setting minimum insurance requirements for motor vehicle owners to ensure that accident victims are properly compensated.

### Conclusion

In enacting the Graves Amendment, Congress acted pursuant to its historical authority to regulate interstate commerce, particularly the instrumentalities of commerce, and displace state laws in favor of Federal rules that are both uniform and fair. The courts have recognized the legitimacy of the enactment. As the Amendment's legislative history reveals, Congress acted with due deliberation and struck the appropriate balance: The law helps to protect businesses from unnecessary litigation and consumers from added costs, limits liability to cases where a motor vehicle owner is at fault, and allows states to continue to set insurance requirements to ensure accident victims are fairly compensated for their injuries.

Senator PRYOR. Thank you.

I have a few questions, here.

Mr. Ruby, let me start with you. And I don't want to get too personal, but, since you're here, let me ask you about your case. When you were injured, I assume you filed a lawsuit, or did you just settle without having to file a suit?

Mr. RUBY. We tried to settle, numerous times. It was forced to a lawsuit and to go to trial.

Senator PRYOR. And did you actually go to trial?

Mr. RUBY. Yes, we did.

Senator PRYOR. And do you recall how many defendants there were in that suit? Because, oftentimes, on something like that, you may sue the—weren't there two vehicles involved?

Mr. RUBY. There were two vehicles involved, correct.

Senator PRYOR. So, sometimes you'll sue the driver of each vehicle, and maybe the—you know, the rental car company, or—can you tell us, do you remember who got sued in that?

Mr. RUBY. The driver of the Budget Rent A Car was the one who ran the red light, so they were the target. The other car that was involved in the accident was also injured during the accident by the Budget Rent A Car.

Senator PRYOR. And do you remember if you recovered from Budget Rent A Car or from the driver of that car, or from both? Do you remember?

Mr. RUBY. There was a minimum of—the driver, who had no fault that—their insurance company did pay. I believe that covered the Tylenol from my being in intensive care. The other, the driver of the Budget car, was the focus of our lawsuit—

Senator PRYOR. OK.

Mr. RUBY.—since they were the ones responsible.

Senator PRYOR. And do you know if you recovered from the driver and from Budget?

Mr. RUBY. The driver of the car, as I said before, had warrants out for his arrest for driving—for speeding. Under further investigation, he had just become a legal citizen, although he had been living here for almost a decade. He had no personal resources whatsoever.

Senator PRYOR. Did he have insurance? He was uninsured?

Mr. RUBY. Not to my knowledge, no.

Senator PRYOR. All right. Well, that's helpful, and I appreciate it.

Let me—gosh, there are lots of questions here, and I know Senator Nelson wants to ask a few, too, but let me dive in, here.

Mr. James, I know that you—sort of in your day job, you represent more of the truck-leasing part of the industry. And today we talked a lot about rental cars, and this may not be really your forte, but it seems to me that there's a difference in the truck leasing industry versus rental cars. Seems like there are a lot more cars rented to just the general public; whereas, with trucks, there—you may have a smaller volume of people, and, in some cases, you would have very well-trained drivers with CDLs, et cetera. Do you see a distinction between—

Mr. JAMES. I see—I certainly see differences in volume, but I also see a lot of similarities. And again, what we're talking about here is, we're talking about owners of rented and leased vehicles. That does include car rental companies, it includes the big car rental companies. Also on that list, we have the American Car Rental Association, which represents all of those small mom-and-pop companies. The larger companies don't have their own trade association.

But, the similarities are, just as in truck leasing—a truck lease, an average lease is probably 5 years. We lease out a truck of any size to a business, business-to-business, for about 5 years. We're still responsible for the maintenance of that vehicle, for putting that vehicle on the road and keeping it a safe vehicle.

Same with the car rental companies. The car rental companies are responsible for providing safe vehicles for use on our highways.

This also affects the auto leasing. I know I lease my Volkswagen, rather than buy it. It affects business-to-business auto leasing. A lot of businesses lease their fleets.

So, the general distinction between the owner of the vehicle not being—having any training or agent affiliation with the operator of the vehicle, I think, is the same in all cases. It's just a matter of—the terms of how long that vehicle is let out differs between the various segments of the industry.

Senator PRYOR. So, when your members lease vehicles to, say, companies that need various vehicles for various reasons—I assumed that the standard contract might be that only certain drivers could drive those vehicles.

Mr. JAMES. Well, when we lease out a truck—if we lease out a truck to Wal-Mart, for instance—a lot of retailers rent trucks for their fleets, and they also rent trucks or lease trucks to make up for peak periods of demand.

Senator PRYOR. And they would require probably a CDL?

Mr. JAMES. Sure. It's—and that's all in a business-to-business contract. We require that any driver of the truck meet that motor carrier's safety plans. So, again, the motor carrier is responsible for hiring their drivers, for ensuring that their drivers have active CDLs.

You know, when a company comes to pick up a leased truck, that truck may be driven by 20 drivers. Once that truck goes into that motor carrier's hands, even under the FMCSA guidelines, that—if that truck is in their hands over 30 days, they are considered the owner of that vehicle for all purposes of operating it.

Senator PRYOR. Has the Graves Amendment caused any change to occur in your industry? I'm not talking about the rental-car part, but the truck leasing industry.

Mr. JAMES. Absolutely?

Senator PRYOR. In what? What—

Mr. JAMES. Well, insurance premiums have gone down. HARCO is one of the biggest commercial insurers. They're—and they've strongly supported the passage of the Graves law. But, insurance rates, their contingent liability rates dropped by 20 percent.

But, even more importantly than that—I can speak in anecdote without telling the company's name—there was a bid-up, by the State of New York, for 500 utility trucks. That's a pretty big contract. And one of my member companies turned that contract down. That was a chance for the State of New York to have a leased fleet that they didn't—they could outsource the maintenance on, they would have a fixed transportation cost on that fleet, and they wouldn't have to tie up State capital in acquiring that fleet. New York didn't get that opportunity, and my member didn't get the business, because of the vicarious liability risk in New York State.

Senator PRYOR. Mr. Leesfield, let me follow up on something that Mr. James said in his opening statement, and I'm curious about your view on this. Mr. James said that all the vehicles are covered by some insurance, even under the Graves Amendment, because there are other applicable laws that would require these leasing companies to maintain their vehicles and carry insurance on their vehicles. And so, basically, as I understand Mr. James' testimony said, they're basically all insured, one way or the other. Do you agree with that? And, if that's so, or—you know, what difference does that make?

Mr. LEESFIELD. Well, it's not so, Mr. Chairman, because of the vehicles that—many vehicles and many drivers are either uninsured, completely, when they purchase their rental car contract, or they're underinsured. Having \$10,000 of insurance is the substantial equivalent today of having no insurance. I can assure you that a renter, who travels to Florida from Venezuela and rents a car at any of the airports or any other stations, does not have insurance in Venezuela, and, if they cause an injury here and they go back to Venezuela, or any other country, there is absolutely no recourse whatsoever. It is not like a private citizen, who lives in Florida, who you can have some recourse against.

There is no enforcement of either insurance requirements or driving standards. What's happened—and I think the Chairman hinted—hit upon this at the—earlier on—if there's no enforcement, if there's no corporate responsibility, if we give anybody total immunity, safety is going to pay the price. So, there is no looking up the driver's record to see if the driver has 30 infractions for drunk driving, reckless driving. None of that exists today. It did exist when the corporation that was responsible for the vehicle—and this is not a foreign notion. If a trucking company employs a trucking driver, and that trucking driver is negligent and causes catastrophic injuries, the trucking company is responsible. The trucking company didn't drive the truck, they only hired Mr. Jones. Mr. Jones was negligent, and he injured somebody severely. This is not a foreign notion.

The availability of insurance to the rental car industry is a matter, I think—I think this gentleman is correct—their premiums went down. There is no question that this is a profit-motive-driven idea. Their premiums did go down, Mr. Chairman. But, at what cost? Who picked up the tab for their premiums going down? Well, it's the U.S. Government, through Medicare, through Medicaid, through Social Security, and it's everybody else, every county government, every State government, and individuals, who—insurance—who have to pay for their profit. This is a question of shifting of who can most afford, as a matter of policy and a matter of—in Florida, of 90 years of common law, and, up until Graves, 6 years of statutory law.

Florida, Governor Bush, and the Republican legislature of Florida looked at the law and said, “We don't want to have unlimited recovery, we want to have limited recovery.” So, they passed Chapter 324. That's what the State experiments have to be with this issue of rental car liability.

To pass an overall immunity, 100 percent immunity, yes, it saves money for the industry, but it does a horrible disservice to the citizens and to the governments that have to pay for it.

Senator PRYOR. Mr. Leesfield, let me ask one more question, and I'm going to turn it over to Senator Nelson, here, in just one moment. But, do you see a distinction between, you know, your average rental car company and then some of these truck leasing companies that Mr. James represents in his day job—not to single out any company specifically—but do you see a distinction there, or are they one and the same?

Mr. LEESFIELD. No, sir, there's a very clear distinction. The rental car companies are domestic corporations who have domestic drivers; they don't have people coming from overseas who don't know the rules of the road; they're not renting to people from countries that drive on the other side of the road or with different customs. They're renting to people with long-term leases.

Anybody can rent a car. Anybody can rent a car. You need a credit card, which could be valid or invalid, and a driver's license, which could be valid or invalid. In our State, and many other States, we have people—we'll just call them “marginal people”—don't want to cast any aspersions here—who go in and rent a car to do their “marginal business,” and, in the course of doing that, injure innocent people.

There is a very clear distinction between a commercial truck rental and a—millions and millions of people, coming from all over the world, renting cars.

Senator PRYOR. Senator Nelson?

Senator NELSON. Mr. Chairman, I want to thank you for having this hearing.

And I think you all have fleshed out a lot of the things, here, that I wanted to get on the record.

And, Mr. James, I want you to know that I am a big fan of the rental companies. And since my daughter got married this summer, my wife drove the largest Penske rental truck from Washington, D.C. to Florida, to get her set up. And so, I can't say enough good things about the treatment that I get, in the kind of bifurcated life



that we live, where we live in Washington and we live in Florida, as well.

Now, you heard my opening statement. And part of that was being repeated here by Mr. Leesfield. Mr. Ruby, a pedestrian—I just attended the funeral for a retired admiral, a friend of Jim Tooley, who's in the office—in the audience here, with us—the son of the late great Governor Leroy Collins. And he was out for his morning bike ride, had stopped, and—at a traffic light; the traffic light turned green, and he got on his bike, and he went across; and the car; who had stopped, turned and didn't see him. And we went to his funeral. Now, he's a retired admiral, and his family is—all his children are grown, and his widow is taken care of. But, if that had been a young person with a big family, and there's no recourse, it puts it in a little different situation.

You take—for example, I said this in my opening comments, that the Republican Governor of Florida, Governor Bush, with a Republican legislature, took on tort reform and wanted to put caps on things. And, with regard to this issue, they put caps at \$500,000 for damages and \$100,000, in Florida law, for pain and suffering.

Now, because Florida is unique—I've described it, Mr. Leesfield has described it—we have these millions of visitors coming to Florida, and most of them are—not “most of them”—a good percentage of them are from out of the country. And so, to be able to recover from the damage that they have caused leaves, folks like Mr. Ruby under the present law, without recourse, with the ultimate result that, if they are insolvent, it's going to be Medicaid, which is the State taxpayer and the Federal taxpayer, or disabled, under the Medicare laws; then it's the Federal taxpayer. And it seems like that we need to balance this.

Now, how did the Graves Amendment get passed? It was back in the early part of this decade, and there was a partisan role to stick it to the trial lawyers. In every opportunity, there was an attempt. And this was on the big highway bill. And it got lost in all the noise. There was a recorded vote in the House that was almost a party-line vote, but apparently the Senate receded to the House amendment—meaning the overall bill, with its overall amendments—at the urging of the White House.

And it seems to me—and I say this sincerely, because I'm a great fan of the industry that you represent—it seems that we have to take into consideration different circumstances and that you can't broadbrush something like this. And then, that's what I come back to, that that's the genius of State sovereignty and State law: to adapt to their individual circumstances. And I underscore the fact it was a Republican Governor with a Republican legislature that put those limits, but recognized there was a reason to have that in Florida.

So, Mr. Chairman, I just want to state that again for the record. Obviously, we're not getting anything done in the next few weeks. But, I want to thank you for having this hearing so that we could air this issue. And let's talk in the future.

Mr. JAMES. Senator, I'd be very happy to talk in the future about this. It's obvious—you know, with all due respect, I'd—all vehicles are covered by insurance. Maybe some drivers aren't, but all vehicles are. But, just this discussion has shown that maybe there are

some more facts that need to be aired, put on the table; and I'd be happy to engage in those discussions. I think this hearing is a very valuable one, and I appreciate you giving me the opportunity to testify. But, I think there are a lot of aspects to this issue—the broadness of its impact on commercial transportation, as well as consumer choice, car rental, the laws that car rental companies are under, in which they have to rent to certain individuals if a basic level of eligibility is met—I think those are all—I think it's a very unique situation, given the interstate nature of our fleet, and I'd be happy to engage in more discussions, and I appreciate this opportunity to do so.

Senator PRYOR. Right.

Senator NELSON. Thank you.

Senator PRYOR. Thank you, Senator Nelson. It's always good to have you here. Good statement.

Let me ask Mr. James and Mr. Leesfield just one, really, last question, and that is—I am curious about statistics—if you all have any sort of statistics, in terms of how frequent are these accidents, where, you know, maybe a rental car company, and someone is from overseas or someone is uninsured, you know, doesn't have any assets, you know, whatever that situation may be—and I'm just curious, if there is—if there are any statistics that lay out the impact of the Graves Amendment and, kind of, the scope of the problem. Are—do you have any of those type statistics, Mr. James?

Mr. JAMES. Well, a lot of these cases are settled; and, due to those settlements, there's not a lot of information. We have information on some of the larger cases, many of which have been in Florida, both under Florida courts and U.S. district courts. We've also gone through one heck of an economic recession. So, any sort of business statistics, I think would be heavily skewed by all the other factors that are out there. But, you know, we'll certainly get whatever statistics we can put together—

Senator PRYOR. Yes.

Mr. JAMES.—about the impact, and get back to the Committee on that.

[The information referred to is contained in the appendix.]

Senator PRYOR. That'd be help.

Mr. Leesfield, do you have any?

Mr. LEESFIELD. Mr. Chairman, there are statistics available supplementing common sense. The rental car driver, unfamiliar with the road, unfamiliar with the rules of the road, often visiting, is a much more distracted and difficult driver, in terms of the number of accidents. Our practice, in what I've seen both in teaching and interacting with others, would verify that.

I don't know what statistics Mr. James has, because, since 2005, in the passage of the Graves Amendment, there have been zero settlements, because there's no reason for the rental car industry to settle a single case if they have absolute immunity by the Graves Amendment. So, for 5 years now, there is no—there's an industry that has 100-percent protection, a rather unique situation.

So, I don't know what the settlement statistics are. I can tell you, beforehand, of the rental car industry. If they were a solvent company, which most of them are—and I gave you the statistics for that, in spite of the mom-and-pop argument, that, in fact, it's con-

solidation of the industry. And—the only statistic I saw is when I came in and looked at a—the rental car agency, and I saw there was a \$6 refueling charge per gallon for gas. And I thought that was interesting statistic, that the \$3 profit on that could pay for all the insurance for all the injured people like Ethan Ruby. There's 6 bucks to refuel your car. Seems to me there's a whole lot of profit in that. And I'm not against profit, either. I think profit is wonderful. I'm glad they're making a profit. I just don't think the taxpayers and the individual citizens should make them more profitable than they already are.

Senator PRYOR. Well, I want to thank all of you all for being here. It's helpful for the Subcommittee and for the full Committee to get your testimony. And any sort of statistics or studies, whatever you also want to send in, we would definitely review those.

We're going to leave the record open for an additional 2 weeks. We anticipate that some of our colleagues will have further follow-up questions—I have a few, myself—that we could follow up on.

But, I want to thank all three of you all for being here; especially you, Mr. Ruby. Thank you for making the effort.

Mr. RUBY. With permission, I'd just like to add—

Senator PRYOR. Sure.

Mr. RUBY.—one more.

Senator PRYOR. Sure.

Mr. RUBY. First of all, I would like to say that if the substance of the Graves bill did have merit, it would not have been snuck in at 2 o'clock in the morning, right before the larger bill was passed.

And to dispel some of the myths of these numbers that we're talking about, \$9 million or \$7 million, or, in my case, a little bit more than that, I'd like, just briefly, to understand just how expensive it is to live in a wheelchair. It costs me \$1,000 a month just to pee. Just to pee. I will never be able to teach my son how to play soccer, or run on the beach with him. And I would give a \$100 million to have that ability back.

If I want to travel, in order to sit in coach, I have to literally hold myself up, the entire flight, because I have no abdominal control. So, should I pay the \$300 and sit and suffer, or should I pay the little bit of extra money to be able to sit in first class? That is not a luxury. I do not live a life of luxury. I live a life of survival.

The amount of money it costs yearly to live—physical therapy, doctors, preventative care—the first person that they put on the stand to testify said that my life will be decreased by 10 years, therefore they shouldn't have to pay the full amount of pain and suffering of a normal life. That's the concession.

My—I do—the money that I have is to be able to live my life on a bare level. It is not to live extravagantly. I drive a Volvo. My wife and I share a Volvo that's 10 years old. It is to survive.

And the pain and suffering goes on another level. The money is to survive and to be able to live and have a chance at life. It is nothing more.

Senator PRYOR. Well, thank you.

Mr. RUBY. Thank you.

Senator PRYOR. And again, thank you for being here.

And thank all three of you for being here today, and all of our previous panel witnesses, as well. We appreciate your time and the effort it took to be here and to prepare.

And, like I said, we'll leave the record open for 2 weeks.

And this hearing is now adjourned.

Thank you.

[Whereupon, at 1:14 p.m., the hearing was adjourned.]

## A P P E N D I X

PREPARED STATEMENT OF HON. JOHN D. ROCKEFELLER IV,  
U.S. SENATOR FROM WEST VIRGINIA

Thank you, Senator Pryor, for holding this important hearing. A major focus of our Committee's work this year has been on oversight of the National Highway Traffic Safety Administration (NHTSA) and legislation to improve vehicle and highway safety.

The Committee has so far passed two critical motor safety bills—the Motor Vehicle Safety Act of 2010 and the Distracted Driving Prevention Act. Both bills will help protect drivers, and prevent fatalities—and I will continue to work to bring both of these bills to the floor.

Today, our focus is on the Federal and state safety programs authorized by Congress in SAFETEA-LU and administered by NHTSA. NHTSA Administrator David Strickland appeared before this Committee earlier this year, and I'm pleased to welcome him back today to share his thoughts on SAFETEA-LU and its results.

As we all know, one of the ways NHTSA makes our roads safer is by improving driver behavior. Every year, NHTSA distributes more than \$500 million in grants to states as an incentive to pass strict safety laws, and to pay for enforcement, education, and other efforts to promote safety.

Congress has directed the use of these funds to push states to enact primary enforcement laws on seat belt usage, promote the use of child safety and booster seats, and create harsh sentences for repeat drunk driving offenders. And we've seen real results. According to the latest data, the vast majority of drivers now use their seat belts, drunk driving has declined, and our roads are getting safer. However, there is still more to be done.

As we prepare for the next reauthorization of SAFETEA-LU, we need to carefully consider whether the programs and grants funded through SAFETEA-LU are being used as effectively as possible. We also need to ask whether there are new programs that need to be funded, or new safety concerns that need to be addressed.

One emerging safety issue I have focused on during my time as Chairman is distracted driving. Blackberries and cell phones have become commonplace. In this Internet-driven decade, everyone is trying to do more at once. As a result, people are typing while driving, talking while driving, and texting while driving. This behavior isn't just foolish—it's dangerous and deadly.

In 2009, approximately 5,500 people died in crashes involving distraction and nearly 500,000 were injured. According to NHTSA, 16 percent of all motor vehicle crashes are caused by distracted driving.

Teen driving is another area of increasing concern. Motor vehicle crashes are the leading cause of death for U.S. teens. In 2008, about 3,500 teens were killed in motor vehicle crashes. These drivers are young and inexperienced, and they are too easily distracted. Several states have adopted graduated driver's licenses. These programs delay full licenses until teens have real-world experience behind the wheel, prohibit teens from using any electronic communication devices while driving, and limit the number of passengers they can have in their car. I expect this Committee to further explore this issue to determine if Federal input will continue to help save teen lives.

While we must deal with new and emerging issues, we must also retain a laser-like focus on the lingering, but pressing issue of drunk driving. Last week I met with Margie Sadler, a West Virginian who volunteers with Mothers Against Drunk Driving (MADD). She works with families that have lost loved ones in tragic crashes. Her heartbreaking stories serve as a reminder to us all of the human cost of drunk driving. I strongly support MADD's goal of eliminating drunk driving, I honor their work, and will continue to do all that I can to advance that goal.

The third panel before this Committee today will focus on vicarious liability in the rental car industry. In 2005, as part of SAFETEA-LU, Congress preempted all state laws that held rental car companies liable for damages caused by drivers in their vehicles. Today we will hear from a young man, Ethan Ruby, who was para-

lyzed at the age of 25 when he was hit by a reckless driver in a rental car. Mr. Ruby has relied on a settlement from the rental car company to pay his medical bills and allow him to recover. If he had been hit by that same car after the passage of the 2005 law, he would have been able to recover little or nothing to pay for his care. This is an important issue worthy of consideration by this Committee.

I want to thank our witnesses for appearing today to discuss these important issues that affect the lives of so many Americans. Through a continued focus on vehicle safety and highway safety, we can reduce the number of deaths and injuries on our roads.

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PREPARED STATEMENT OF THE NATIONAL AUTOMOBILE DEALERS ASSOCIATION

Mr. Chairman, on behalf of the over 16,000 members of the National Automobile Dealers Association (NADA) and its American Truck Dealers (ATD) subsidiary, who employ approximately one million Americans, we strongly oppose any effort to overturn the Graves/Boucher law, which creates uniformity in interstate commerce by prohibiting states from imposing vicarious liability on non-negligent owners of rented or leased vehicles. The Graves/Boucher law does not prohibit states from imposing minimum financial responsibility laws for vehicle owners in each state, does not interfere with states' ability to impose minimum insurance requirements, and does not exempt rental and leasing companies from liability if they are negligent or otherwise at fault. As the Subcommittee addressed the issue of vicarious liability during a hearing on September 28, 2010, we respectfully request that our statement be included in the hearing record.

**Background**

Support for passage of Federal vicarious liability reform gained momentum in the late 1990s and early 2000s as the costs associated with vehicle leasing and renting mounted in states such as New York and Florida because of the frequency of massive judgments, attorney fees, and increased supplemental insurance premiums. Members of Congress became increasingly sympathetic as lessors were faced with outrageous exposure to liability when they had no control over the vehicle and did not contribute in any way to an accident.

While not all states have vicarious liability laws, a Federal law was needed because of the interstate nature of renting and leasing. Companies in states without vicarious liability laws had to buy supplemental insurance out of concern that either a lessee would drive a vehicle to a state where such laws exist or that a court would apply its vicarious liability laws in an accident that occurred in another state. For example, a court in New York applied New York's vicarious liability statute in an action by New York and Ohio passengers against a Pennsylvania lessor of a van and a New York employer of the lessee, arising out of a collision that occurred on the employer's property in Pennsylvania.<sup>1</sup>

In 2005, Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, which included a bipartisan amendment sponsored by Reps. Sam Graves (R-MO) and Rick Boucher (D-VA) to create Federal uniformity and eliminate vicarious liability laws that were adversely affecting interstate commerce.

NADA/ATD, as part of a larger coalition, supported passage of the 2005 vicarious liability reform law which simply requires that, in order for a party to be held financially responsible for the consequences of an accident, the party must actually be at fault. The law does not exempt rental and leasing companies from liability if they are negligent or otherwise at fault and does not exempt the company from the minimum financial responsibility laws that apply to vehicle owners in each state.

Under the existing Graves/Boucher law, the following safeguards exist:

- All renting and leasing companies are required to follow state approved insurance coverage requirements.
- Injured parties are compensated the same whether they are injured by a rented or leased car, or a privately owned car.
- Renting and leasing companies that are at fault can not escape liability—the law does not excuse any lessor or rental car company from liability for “negligent entrustment” nor does it excuse any entity from responsibility for its employees' negligence (under respondent superior).
- States can still determine the level of compensation available to injured parties by setting minimum financial responsibility limits for all vehicles. The Graves/

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<sup>1</sup>*Vasquez v. Christian Herald Ass'n Inc.* 588 N.Y. S. 291, N.Y.A.D. 1st Dept., 1992.

Boucher law does not supersede any state laws that require insurance or impose or allow any lower insurance requirements in any state or on any class of vehicles or vehicle ownership.

- The law does not protect renting and leasing companies that are negligent in their renting and leasing practices or in their maintenance or care of a vehicle.

Based on the experience of the auto and truck industry with vicarious liability laws prior to enactment of the Graves/Boucher law, repeal of the law would have a devastating impact by:

1. *Making vehicle renting or leasing unavailable or unaffordable for many consumers and small businesses not just in vicarious liability states, but throughout the country.*
  2. *Reinstating an antiquated and unfair policy that imposes liability on lessors and rental companies based on ownership, not control of the vehicle, negligence or fault.*
  3. *Posing an immediate threat to car and truck leasing that would hurt the automobile and truck industry as well as the economy.*
1. *Repeal of the law would make vehicle renting or leasing unavailable or unaffordable for many consumers and small businesses not just in vicarious liability states, but throughout the country.*

Vehicle leasing is popular for consumers and small businesses since they benefit from both a low down-payment and smaller monthly payments. Monthly payments on a lease are based on the lower total cost of “owning” the vehicle for the lease term of the vehicle, and not the entire purchase price of the vehicle. Manufacturers commonly offer aggressive incentives to leases that make them an attractive financial option. Many consumers and small businesses rely on leasing as the most efficient, and sometimes only, way to finance vehicles. This is particularly true in Northeast states (especially New York), where a high percentage of motor vehicles are leased.

The experience of staggeringly high vicarious liability verdicts in the 1990s and early 2000s against leasing companies, banks, and most auto manufacturers’ captive financing arms resulted in these companies pulling out of leasing in those states where unlimited lessor vicarious liability existed.<sup>2</sup> In addition, many small rental companies were forced to close in New York.<sup>3</sup> When these companies completely withdrew from the leasing market, it left customers with few affordable options to lease a new car or truck.

Because companies could not obtain insurance against vicarious liability or because it became more expensive to do so, companies that continued to lease cars raised their fees by several hundred dollars to account for their liability under vicarious liability laws.<sup>4</sup> Each of the few brands that stayed raised acquisition fees to offset vicarious liability risk, making leases much more expensive. (This was especially true for smaller leasing companies.) In 2003 and 2004, 200,000 leasing consumers were estimated to pay an average additional acquisition fee of \$524.88 each, or a total of \$105 million more to lease a car in New York due to the vicarious liability law.<sup>5</sup>

The Graves/Boucher law was needed to ensure vehicle leasing was maintained as an affordable option. Small business owners have frequently stated that leasing is vital to their competitiveness and ability to expand. Leasing allows businesses to avoid tying up capital and credit lines that they could be using to expand and grow their business. It allows the monthly costs for vehicles used for business purposes to be “expensed,” rather than dealing with complicated depreciation rules. The loss of leasing options or increased fees prevents customers and small businesses from driving newer, safer, more fuel efficient, and cleaner cars and trucks and expanding their vehicle fleets.

2. *Repeal of the law would reinstate an antiquated and unfair policy that imposes liability on lessors and rental companies based on ownership, not control of the vehicle, negligence or fault.*

<sup>2</sup> Approximately 19 lenders, such as the finance arms of General Motors, Ford, Honda, as well as banks such as Chase Manhattan stopped leasing in New York because of the increasing costs associated with liability.

<sup>3</sup> “N.Y.’s Vicarious Liability Costly for Consumers and Auto Dealers,” *Insurance Journal*, July 19, 2004.

<sup>4</sup> Bill Platt, “Leasing a Chrysler or Mercedes Will Cost More in Four States,” *Wall Street Journal*, April 16, 2003.

<sup>5</sup> Greater New York Automobile Dealers Association surveys.

Vicarious liability for vehicle leasing was born out of an antiquated law implemented when only the wealthy owned cars and most had chauffeurs or livery drivers. The law was designed to keep the wealthy from pushing liability onto their drivers. Injured parties would then be able to seek damages from the vehicle owner, not the driver. The law was not intended to impart liability on vehicle leasing companies, which have no control over who drives a leased vehicle.

Lessor vicarious liability places an unjust and unjustified burden on entities that have not violated any law or obligation and that have not been negligent in any way. The lessors do not control the manner in which a lessee—or the lessee’s family or friends—operate a vehicle. Also, vicarious liability does not appropriately apportion the cost of an accident to the party that caused the accident.

One of the exceptions to the Graves/Boucher law is a claim under negligent entrustment. Thus, if a leasing company or a rental company “negligently entrusted” a vehicle to the lessee, renter, or driver, that lessor or rental company would be liable for damages in the event of an accident. Claims for negligent entrustment will depend generally on, “the degree of knowledge the supplier of a chattel has or should have had concerning the entrustee’s propensity to use the chattel in an improper or dangerous fashion.”<sup>6</sup>

For example, providing a vehicle to an intoxicated customer would likely be deemed negligent entrustment, and would thus preclude the application of the exemption from liability that is provided to a rental company under the Graves/Boucher law. Similarly, providing a rental vehicle to an unlicensed driver would likely result in holding the rental company liable in the event of an accident.

Merely renting or leasing a vehicle to a consumer or lessee who has an accident or whose family member subsequently has an accident would not, generally, without the renter’s or lessor’s knowledge that the consumer or lessee had a propensity or likelihood to use the vehicle in an improper or dangerous fashion, result in liability to the lessor. However, the lessee (and his or her insurance company) would be liable for any damages or injuries he or she caused. Current law does not impair an accident victim’s ability to sue the driver or anyone else at fault for their damages in any amount.

*3. Repeal of the law would pose an immediate threat to car and truck leasing that would hurt the automobile and truck industry as well as the economy.*

Repeal of vicarious liability reform would put a strain on auto and truck dealers, and auto and truck manufacturers, as the industry is just now beginning to slowly recover from the recession.

New York’s vicarious liability law led to a 36 percent decline in the number of vehicles leased in that state, according to the Alliance of Automobile Manufacturers and the Greater New York Automobile Dealers Association.<sup>7</sup> More than 19 automakers and every major retail bank stopped or curtailed car leasing in New York due to its law before enactment of the Graves/Boucher law.

Following passage of the Graves/Boucher law, all the captive finance companies and almost every bank that had pulled out of leasing came back to New York, and nationally, auto and truck leasing increased, resulting in more affordable leasing terms for customers and small businesses. Vehicle manufacturers became more inclined to support and encourage service loaner car fleets, as the unfair liability issues were resolved. The Graves/Boucher law has also contributed to more dealerships operating their own service loaner car fleets for the benefit and convenience of their customers. In addition, after the law passed, dealers increased the number of “service vehicles,” for which customers may rent on a short- or long-term basis. These vehicles are used primarily when a customer or small business is looking to finance a new or used vehicle or while their primary vehicle is being serviced or repaired. Since passage of the Graves/Boucher law, participation in manufacturer-sponsored customer loaner/rental programs for dealers has increased 67 percent in New York and 42 percent nationally.<sup>8</sup> *Any return of vicarious liability laws will deter this popular service among dealers and consumers.*

The adverse impact would also be felt by the truck industry. Many truck dealers also operate manufacturer-sponsored truck leasing programs, which have been one of the few bright spots in the significantly depressed trucking industry. Prior to enactment of the Graves/Boucher law, truck renting and leasing declined because trucks would operate in or through New York and other states with vicarious liability laws. Truck dealers also were unable to secure liability insurance for lease and rental fleets, inhibiting the ability to secure financing for their lease fleets, limiting

<sup>6</sup> *Muller v. Gilliard*, 27 Misc.3d 1231(A), slip copy, N.Y. Supreme, May 26, 2010.

<sup>7</sup> “Vicarious liability costs New York consumers and businesses millions,” Business Council of New York State, June 2005.

<sup>8</sup> Sean Harrigan, PDP Group Inc.



dealers' ability to serve customers, and restricting the flow of interstate commerce. The vehicle truck leasing business is one of the few bright spots in today's depressed economy. Repeal of the vicarious liability protection would squelch this economically important segment of the truck industry.

Repeal of Graves/Boucher would have a detrimental impact on jobs, particularly at a time of 9.6 percent unemployment. Automobile dealership jobs in New York, Rhode Island and other Northeastern states would be especially hard hit if Graves/Boucher was repealed. Additionally, during debate to reform New York's vicarious liability law in 2004, the United Auto Workers urged vicarious liability reform to protect workers and jobs. Jim Duncan, New York State Director, Region 9, said he feared for the jobs of New Yorkers in auto parts plants in Syracuse, Tonawanda and throughout the state as well as in downstate dealerships.

### Conclusion

At a time when businesses are attempting to rebuild and grow the economy, Congress should reject any changes to the current vicarious liability reform law. Any attempt to overturn the existing Graves/Boucher law would have dramatic negative consequences for consumers and small businesses.

- Auto and truck leasing will be discouraged and will diminish as leasing and rental entities ceasing doing business in those jurisdictions that apply this antiquated legal theory.
- Vehicles will be more expensive for consumers, through increased lease, acquisition, and insurance costs.
- Consumers or small businesses will have limited options for rentals and loaner vehicles, especially for those waiting for a vehicle to be serviced or repaired.
- Auto and truck dealers will lose business, and governments will lose needed tax revenues.
- Auto and truck sales will be lost as a result of a lack of leasing options hurts employment in certain states and the national economy.

NADA/ATD appreciates the opportunity to provide the Committee with our views on this important subject.

CONGRESS OF THE UNITED STATES  
*Washington, DC, October 12, 2010*

HON. JOHN D. ROCKEFELLER IV,  
Chairman,  
Senate Committee on Commerce,  
Science, and Transportation,  
Washington, DC.

Hon. KAY BAILEY HUTCHISON,  
Ranking Member,  
Senate Committee on Commerce,  
Science, and Transportation,  
Washington, DC.

RE: Hearing on "NHTSA Oversight: An Examination of the Highway Safety Provisions of SAFETEA-LU"

Dear Chairman Rockefeller and Ranking Member Hutchison:

We write to you to respectfully request this letter be included in the record for the hearing on "NHTSA Oversight: An Examination of the Highway Safety Provisions of SAFETEA-LU," which was held on September 28, 2010, in the Senate Committee on Commerce, Science, and Transportation. We appreciate your consideration of this matter.

As you know, SAFETEA-LU corrected an inequity in the car and truck renting and leasing industries (Sec. 10208). As co-authors of this provision, we strongly oppose any attempt to repeal or weaken it.

This provision, commonly referred to as "vicarious liability" or limitless liability without fault, restored fair competition to the car and truck renting and leasing industry, ultimately lowering costs and increasing choices for all consumers. Prior to this law, a small number of States imposed vicarious liability on companies and their affiliates simply because they owned a vehicle involved in an accident. Whether or not the rental or leasing company or vehicle was at fault was completely irrelevant, and the ensuing lawsuits cost consumers nationwide an estimated \$100 million annually.

The vicarious liability provision does not provide, nor is it intended to provide, blanket immunity for car renting and leasing companies or car manufacturers for proven negligible business practices. In fact, the provision in SAFETEA-LU clearly states that "An owner of a motor vehicle that rents or leases the vehicle to a person shall not be liable under the law of any State or political subdivision thereof, by

reason of being the owner of the vehicle, for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, *if, there is no negligence or criminal wrongdoing on the part of the owner.*" It simply protects businesses from being held liable for "user error" of a vehicle not owned by the driver.

Repeal of this law will increase costs for non-negligent renting and leasing customers to cover the actions of negligent customers. Further, businesses will see their costs increase for the transportation of goods and are certain to be at-risk of failure when hefty verdicts are awarded to pay for the actions of their at-fault renters. In an economy where many businesses, large and small, are fighting just to survive, it is vitally important not to add to their load the job-killing burdens of frivolous lawsuits, which is precisely what repealing or weakening our provision will do.

Lastly, existing law already requires renting and leasing companies to follow State approved insurance coverage requirements. This ensures that injured parties are compensated the same whether they are injured by a rented car, a leased car, or a car that is privately owned. Nothing in our provision prohibits States from increasing their minimum coverage requirements.

Again, we appreciate your consideration of our request. Please feel free to contact us directly or Mike Matousek (Rep. Graves) at 202-225-7041 or Chris Davis (Rep. Boucher) at 202-225-3861 of our staff should you have any questions or require additional information.

Sincerely,

SARA GRAVES,  
*Member of Congress.*  
RICK BOUCHER,  
*Member of Congress.*

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV  
TO HON. DAVID L. STRICKLAND

*Question 1.* The Safe, Accountable, Flexible, Transportation Equity Act: a Legacy for Users (SAFETEA-LU), which was passed in 2005, required the National Highway Traffic Safety Administration (NHTSA) to issue a final rule on occupant ejection mitigation. A key component of the law requires that the performance standards "reduce complete and partial ejections." Each year, nearly 9,000 people are killed and another 20,000 injured as a result of being ejected or partially ejected from a vehicle during a crash. Side air curtains often leave small openings that may allow partial ejection of limbs or even the full ejection of infants and toddlers. NHTSA has recognized that advanced window glazing in addition to side air curtains enhances the safety of vehicle occupants. In issuing final rules, I encourage NHTSA to maximize consumer safety. What is the status of the occupant ejection mitigation rulemaking and can you comment on the how the proposed rule would mitigate partial occupant ejection?

*Answer.* We are in the process of completing a final rule that is consistent with SAFETEA-LU and meets our January 31, 2011 target for publication. The December 2, 2009 notice of proposed rulemaking (NPRM) for ejection mitigation was aimed at reducing the partial and complete ejection of vehicle occupants through side windows in crashes, particularly rollover crashes. The NPRM anticipated that manufacturers would meet the standard by enlarging and making more robust existing side impact air bag curtains, and possibly supplementing them with advanced glazing. The proposed rule would restrict the amount of outward displacement an impactor may travel beyond the plane of the window to less than 100 mm in target locations distributed around the window opening. This requirement would help to ensure full coverage of the window opening and the elimination of possible small ejection portals, thus addressing in a very significant way both partial and complete occupant ejections. We believe that when this final rule is implemented, it will significantly reduce the number of fatalities and serious injuries associated with complete and partial occupant ejections in rollovers and other types of vehicle crashes in a cost effective, reasonable, and objective manner.

*Question 2.* In your testimony before the Committee on September 28th, you stated: "We have ongoing concerns about the pedestrian safety and distraction, and we have initiated pilot programs in each of these areas in the hope to use the results to guide policy recommendations for the next reauthorization." Please provide the Committee with additional information concerning NHTSA's pilot program on pedestrian safety.

Answer. NHTSA has pedestrian safety demonstration programs promoting safety education and enforcement in Chicago, Florida, North Carolina and New Mexico. These locations are implementing pedestrian education and enforcement programs and strategies to complement existing or planned pedestrian engineering treatments, such as barriers, islands, signals and markings, to improve infrastructure over the course of 3 to 4 years. Examples of specific initiatives being demonstrated in these locations include a safety education campaign directed at motorists about distracted driving, sharing the road, and vulnerable road user awareness; special law enforcement details assigned to crosswalks to focus on motorist observance of pedestrian laws and pedestrian observance of crossing laws; and enforcement operations focusing on speeding on neighborhood streets, rural roadways, and school zones with documented pedestrian safety problems.

*Question 3.* Motorcycle safety remains an area of prominent concern. As you noted in your testimony, while other highway safety statistics are improving, motorcycle fatalities increased by 11 percent between 2004 and 2009. Please provide the Committee with additional information on NHTSA's strategy for reducing motorcycle deaths. The Agency's Vehicle Safety Rulemaking and Research Priority Plan for 2009–2011 indicated that NHTSA was assessing Anti-lock Brake Systems (ABS) for motorcycles and that the next Agency decision was expected in 2010. Please provide an update on this activity and any other activities that NHTSA intends to undertake to improve motorcycle safety.

Answer. Motorcycle helmets are the most effective means for reducing motorcycle deaths. Efforts are underway to aid State and local law enforcement officials in enforcing State laws that require motorcyclists to use helmets meeting Federal safety standards. NHTSA is pursuing a comprehensive strategy to reduce motorcycle deaths that also includes efforts to improve rider training and licensing practices and strategies to improve compliance with safety laws. Specific projects currently planned or underway include the development of Model National Standards for Entry-Level Rider Training, updating the Model Motorcycle Operators Manual and licensing knowledge test questions for use by State licensing agencies, a demonstration program to reduce the number of improperly licensed riders, research on motorcyclists' visual scanning skills, and a law enforcement training program to engage officers in improving motorcycle safety in the community.

As the result of a comprehensive review of several different sources of crash data and analysis of test results, NHTSA has decided to delay rulemaking on ABS for motorcycles due to the inconclusive results. NHTSA has placed the results of crash data study and research in NHTSA Docket Number 2002–11950, which can be accessed at [www.regulations.gov](http://www.regulations.gov). We will continue to monitor the crash data and work with industry to identify motorcycles equipped with ABS both here and abroad. In addition, we are moving forward with a crash causation study that, among other things, will look specifically at braking-related crashes. This will be the first study of its kind in more than 30 years.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. ROGER F. WICKER TO  
HON. DAVID L. STRICKLAND

*Question.* The Federal Communication Commission's (FCC) National Broadband Plan (NBP) was released earlier this year. The plan includes many recommendations that reference NHTSA's role in deploying a nationwide next generation 911 (NG911) system. Specifically, Recommendation 16.13 references the need for NHTSA to analyze estimated costs of deploying and operating a NG911 system, and report to Congress no later than the end of 2011. What actions has NHTSA performed to date in carrying out the NBP recommendation? How will this study be performed? What is NHTSA's timeline for completion of this report?

Answer. Recommendation 16.13 of the National Broadband Plan states, "The National Highway Traffic Safety Administration (NHTSA) should prepare a report to identify the costs of deploying a nationwide NG911 System and recommend that Congress allocate public funding." The Plan further describes the proposed contents of the report in detail. Completing this report would be a significant undertaking for which NHTSA does not have available funds. However, the agency has taken the initial step to develop the specifications and cost estimate for completing the recommended report. We expect to finish this initial step at the end of calendar year 2010. NHTSA would be able to develop a timeline for the completion of the recommended report if the necessary resources are available.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE McCASKILL TO  
ETHAN RUBY AND RESPONDED TO BY DAVID C. COOK, MARC S. MOLLER KREINDLER  
& KREINDLER LLP

*Question 1.* How does the Graves/Boucher provision in the Transportation Equity Act of 2005 address an injured party suing a company for negligence in the renting or leasing of a vehicle?

Answer. 1. Graves prejudices the rights of victims of rental car operator negligence by insulating the rental car companies from liability for damages.

2. The immunization of rental car companies from liability for the negligence of those who rent their cars and cause accidents will embolden the rental car companies to be even less careful than they are now in renting their vehicles because there is no economic responsibility that attaches for that act, except when it can be proved that the leasing itself was negligent. Negligent entrustment, for example, may be difficult to prove even when the entrustment is negligent. If rental car companies believe that they should have no liability in a given circumstance they can always bring their own action against the negligent driver. The burden of litigation and protecting the rental car companies should not be borne by the victims.

3. With rental car companies insulated from economic responsibility for negligence of its drivers, the state and local governments will be required as a matter of law to bear the economic burden of medical care and rehabilitation of victims. That makes no sense when state and local governments are struggling to meet their own burdens of providing service to their citizens.

4. Persons who lease cars or trucks from rental car or truck leasing companies most often cannot be located or when located carry minimal insurance. Thus the argument that the drivers of rental car companies' cars can still be sued for their negligence offers little protection for the victim. Renters who live in foreign countries, for example, will be virtually impossible to hold accountable.

5. Purchasing third party liability insurance is a cost of doing business for rental car and truck companies which are capable of being spread among all renters of cars and trucks and thus would impose a modest burden, if it be considered a burden at all, upon the rental agencies themselves.

*Question 2.* Since passage of the Graves/Boucher provision in the Transportation Equity Act, what recovery options exist for a party injured by a rental car driven by an uninsured driver?

Answer. 1. The issue of whether rental car companies should be insulated from liability for the negligence of its drivers should properly be resolved on a state-by-state basis and not by Federal legislation. Federalization of insulating rental car companies fails to allow a distinction between states which have a large transient car and truck renter population and those states in which rental car and truck leasing activity has no such aspect. E.g. Florida and New York vs. North Dakota. The state legislatures are the proper fora in which the distinctions and issues should be mediated and resolved.

2. Preemption of state laws is especially inappropriate in these circumstances since the extraordinary burden and risk placed upon the victims and states is not counterbalanced by appropriate safeguards in the rental process and business to insure that victims have adequate protection. Minimum insurance standards embodied in state law are insufficient for the profit-making companies. Few industries, if any, enjoy the extraordinary protection rental car companies obtained through Boucher. The rationale of low mandatory limits of coverage in some state laws which may be required to accommodate the non-business and small business driver population has no application or justification for the highly profitable car and truck rental business. If those companies cannot buy or afford adequate and meaningful insurance coverage they should not be in the business. Victims do not have to subsidize them.

3. Ethan Ruby received fair compensation for his catastrophic injuries as his action was pre-Graves, however, by contrast a recent post-Graves New York Second Department Appellate Division Decision (attached) established the near futility of pursuing negligent entrustment. In *Byrne v. Budget et. al.* The operator, holding a restricted license (originally Suspended for DUI and reinstated as Restricted enabling travel to and from work and during the course of his employment) with a lengthy history of illegal drug abuse, alcoholism, DUI, multiple criminal convictions and incarceration ran over and killed a young female bicyclist. The case was dismissed against the rental company as a restricted license was ruled a valid license and there is no legal duty imposed upon the rental company (even on notice of a Restricted License) to investigate the renter's/operator's driving and/or criminal record.

ATTACHMENT

*Byrne v. Collins*

2010 NY Slip Op 07507

Decided on October 19, 2010

Appellate Division, Second Department

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This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on October 19, 2010

**Supreme Court of the State of New York****Appellate Division : Second Judicial Department**

Mark C. Dillon, J.P.  
Anita R. Florio  
John M. Leventhal  
Cheryl E. Chambers, JJ.

2010-00431  
(Index No. 38029/06)

[\*] *David Byrne, etc., respondent,*

v.

*James Collins, et al.,* defendants, Budget Truck Trust I Wilmington Trust Co., *et al.,* appellants.

Reardon & Sclafani, P.C., Tarrytown, N.Y. (Michael V. Sclafani of counsel), for appellants.  
Kreindler & Kreindler, LLP, New York, N.Y. (Megan W. Benett of counsel), for respondent.

**Decision & Order**

In an action, inter alia, to recover damages for personal injuries, the defendants Budget Truck Trust I Wilmington Trust Co. and Budget Rent-A-Car System, Inc., appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (F. Rivera, J.), dated November 24, 2009, as denied that branch of their motion, made jointly with the defendants Perfect Car Rental, doing business as Budget Truck Rental, and Budget Truck Rental, LLC, which was for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the motion which was for summary judgment dismissing the complaint insofar as asserted against the defendants Budget Truck Trust I Wilmington Trust Co. and Budget Rent-A-Car System, Inc., is granted.

The plaintiffs decedent was fatally injured when, while riding a bicycle, she was struck by a truck. At the time of the accident, the defendant Budget Truck Trust I Wilmington Trust Co. (hereinafter Budget Truck Trust) was the titled owner of the truck and the defendant Budget Rent-A-Car System, Inc. (hereinafter Budget Rent-A-Car, together the appellants), was the registered owner. On the morning of the day of the accident, Michael James, a person employed as an assistant supervisor for the defendant JBG Trucking (hereinafter JBG), had rented the truck involved in the accident from Perfect Car Rental, doing business as Budget Truck Rental (hereinafter Perfect Rental), a company that operated as a dealer for the defendant Budget Truck Rental, LLC (hereinafter Budget, LLC). At the time of the accident, the truck was being driven by the defendant James Collins, a part-time employee of JBG.

The decedent's brother, on behalf of himself and the decedent's estate, commenced this action against the appellants, among others, to recover damages for wrongful death and personal injuries, alleging, inter alia, negligent entrustment. The second cause of action, which alleged negligent entrustment, asserted, in effect, that Perfect

Rental's counter agent Saul Friedman [\*2] negligently entrusted the truck to Collins by failing to thoroughly review the driving and criminal history which led to the restriction of Collins' license to a class C driver's license and, further, that there was readily observable evidence of Collins' drug use on the day of the rental and accident.

To establish a cause of action under a theory of negligent entrustment, "the defendant must either have some special knowledge concerning a characteristic or condition peculiar to the [person to whom a particular chattel is given] which renders [that person's] use of the chattel unreasonably dangerous . . . or some special knowledge as to a characteristic or defect peculiar to the chattel which renders it unreasonably dangerous" (*Cook v. Schapiro*, 58 AD3d 664, 666, *Zara v. Perzan*, 185 AD2d 236, 237).

The appellants made a prima facie showing of entitlement to judgment as a matter of law on the second cause of action insofar as asserted against them by demonstrating that the rental truck they owned was not negligently entrusted to Collins. They submitted, inter alia, transcripts of deposition testimony of Collins, Michael James, and Friedman, as well as Budget, LLC's dealer manager Natalie Brown, which collectively established, prima facie, that, although not required to do so by any internal policies when dealing with business accounts such as JBG's, Perfect Rental's counter agent Friedman nonetheless verified that Collins had a restricted, yet valid, driver's license on the morning of the rental and accident. Furthermore, the testimony of Collins and of Michael James established, prima facie, that Collins had not used drugs the day of the accident.

In opposition thereto, the plaintiff submitted, inter alia, an abstract of Collins' driving record, which showed that he indeed had a restricted, yet valid, Class C driver's license on the day of the rental and accident. The plaintiff also included excerpts of deposition transcripts of Collins and Michael James, which failed to support his conclusory and speculative assertion that Collins may have been under the influence of drugs on the day of the rental and accident. These submissions were insufficient to raise a triable issue of fact as to whether or not the appellants possessed special knowledge concerning a characteristic or condition peculiar to Collins that rendered his use of the truck unreasonably dangerous. Thus, the negligent entrustment cause of action should have been dismissed insofar as asserted against the appellants (*see generally Alvarez v. Prospect Hospital*, 68 NY2d 320, 324).

Contrary to the plaintiffs contention, the appellants' failure to provide copies of any internal policies as to investigation of potential renters with restricted licenses constitutes an insufficient basis upon which to deny their motion for summary judgment. Even if such a policy had been violated, under the circumstances of this case, such violation would not constitute actionable negligence (*see Lambert v. Bracco*, 18 AD3d 619, 620; *Newsome v. Cservak*, 130 AD2d 637, 638).

The first cause of action, which was based on the alleged vicarious liability of the appellants, was barred under the Graves Amendment (49 U.S.C. § 30106), as the appellants showed they are "owner[s] . . . engaged in the trade or business of renting or leasing motor vehicles" (49 U.S.C. § 30106; *see Gluck v. Nebgen*, 72 AD3d 1023), and should also have been dismissed.

The plaintiffs remaining contentions either are without merit or have been rendered academic in light of this determination.

Accordingly, that branch of the motion which was for summary judgment dismissing the complaint insofar as asserted against the appellants should have been granted. Dillon, J.P., Florio, Leventhal and Chambers, JJ., concur.

ENTER: [\*3]

MATTHEW G. KIERNAN,  
Clerk of the Court.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. BYRON DORGAN TO  
IRA H. LESFIELD

*Question.* The Transportation Equity Act of 2005 (Sec. 30106) provides that owners of rental and leasing vehicles are not liable for harm related to those vehicles, provided there is no negligence or criminal wrongdoing on the part of the owner. This provision ensures that there is no absolute immunity for vehicle owners when they are negligent. If a consumer rents a car and there are faulty brakes, and he suffers an injury, would the consumer be able to sue the company for negligence in Florida and other states across the country?

*Answer.* The rental company *could* be liable under narrow circumstances. However, if the rental car driver noticed that the brakes are faulty, and not operating

correctly, and continued to drive the car, the operator would be negligent for which there is no recourse by the injured party.

In Florida, as in most states, we have “shared” liability and the rental car company could greatly diminish or eliminate their responsibility by blaming the renting driver, who has returned to his home state or home country. I hope this helps answer your inquiry.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE McCASKILL TO  
THOMAS M. JAMES

*Question 1.* How does the Graves/Boucher provision in the Transportation Equity Act of 2005 address an injured party suing a company for negligence in the renting or leasing of a vehicle?

*Answer.* The Graves/Boucher provision does not impact an injured party suing a company for negligence in the renting or leasing of a vehicle. In fact, the law is very clear that protection from liability only exists when “there is no negligence or criminal wrongdoing on the part of the owner.” In other words, the Graves/Boucher provision provides no protection from liability for renting and leasing companies whose negligence contributes to an accident and claim. If a rental company’s actions are found to be negligent, such as renting to a visibly intoxicated driver, then the Graves/Boucher provision would not apply. The Graves/Boucher provision merely prevents these companies from being held liable without fault for actions that are outside of their control.

*Question 2.* Since passage of the Graves/Boucher provision in the Transportation Equity Act, what recovery options exist for a party injured by a rental car driven by an uninsured driver?

*Answer.* Owners of rental cars are required to fulfill state requirements for liability insurance just as owners of all other cars on the road in a given state. In the event a rental car is driven by an uninsured driver, the injured party at a minimum can recover up to the state financial responsibility limits. Beyond that, the injured party may pursue the negligent party, which depending upon the circumstances could be either the renter or the rental car company. In either case, the Graves/Boucher provision would not foreclose an injured party from seeking recovery from a negligent party as well as seeking recovery against the rental car company in the amount of the state-mandated minimum level of financial responsibility.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. BYRON DORGAN TO  
THOMAS M. JAMES

*Question.* It is my understanding that the Graves/Boucher provision included in the 2005 Highway Safety Reauthorization (TEA-LU) eliminates liability without fault judgments against vehicle renting and leasing companies. Does the Graves/Boucher provision also specifically exempt from coverage any negligence on the part of the owner? Under the Graves/Boucher provision would a company which rents a car to an intoxicated person and he causes an accident still be appropriately subject to liability based on negligence?

*Answer.* The Graves/Boucher provision provides absolutely no protection from liability for renting and leasing companies whose negligence contributes to an accident and claim. If a rental company’s actions are found to be negligent, such as renting to a visibly intoxicated driver, then the Graves/Boucher provision would not apply. The Graves/Boucher provision merely prevents these companies from being held liable without fault for actions that are outside of their control.

TRUCK RENTING AND LEASING ASSOCIATION,  
*Alexandria, VA, October 12, 2010*

Chairman JOHN D. ROCKEFELLER IV,  
 Ranking Member KAY BAILEY HUTCHISON,  
 Subcommittee Chairman MARK PRYOR,  
 Subcommittee Ranking Member ROGER WICKER,  
 Committee on Commerce, Science, and Transportation,  
 Washington, DC.

Re: Additional Submission for Record of September 28, 2010 NHTSA Hearing

Dear Chairman Rockefeller, Ranking Member Hutchison, Chairman Pryor, and  
 Ranking Member Wicker:

I would like to once again thank you for the opportunity to testify before the Committee on the issue of the impact of the Graves/Boucher amendment. I believe that my testimony provided you and the members of the Committee with a sense of how important this law has become to the rental, leasing, and automobile manufacturing industries, and ultimately to protecting consumer choices in the rental and leasing marketplaces.

I would like to also take this opportunity to clarify a few points that were raised during the hearing.

#### **Foreign Renters No More Likely To Cause Damage than U.S. Born**

During the hearing, Chairman Pryor asked for additional data as it relates to the issue of foreign drivers and the frequency in which they are engaged in auto accidents while using rented or leased vehicles. There is no aggregate data for the industry on this issue, but in speaking with individual rental car companies, the rate of incident on foreign renters is almost identical to domestic rental customers. As it relates to foreign renters and insurance, at a minimum all foreign renters are provided (by rental car companies) the liability protection that meets a state's minimum final responsibility limits. In addition, many foreign drivers have supplemental insurance through full value vouchers or tour programs that provide primary liability protection. In addition to this insurance coverage, foreign drivers are offered and many elect to purchase, supplemental liability coverage from individual companies; this insurance product provides up to \$1 million of coverage. According to some company statistics, foreign renters on average purchase the supplemental liability coverage 79 percent of the time.

#### **2005 Graves Amendment Not a Case of First Impression for Congress**

First, the issue of vicarious liability reform has been debated and discussed extensively in both the House of Representatives and the Senate for well over a decade. In 1996, during the 104th Congress, the House and Senate easily passed H.R. 956: Product Liability Fairness Act of 1995, a comprehensive product liability reform bill. The measure contained a vicarious liability reform provision offered by Representative Pete Geren (D-TX). This provision was approved by voice vote as an amendment. In May 1996, President Clinton vetoed the bill, thereby ending chances to secure passage of product liability reform in the 104th Congress.

On January 21, 1997 during the 105th Congress, Senator Ashcroft introduced S. 5: Product Liability Reform Act of 1997, a comprehensive product liability reform bill identical to H.R. 956 that contained a vicarious liability reform provision. In May 1997, the Senate Committee on Commerce, Science, and Transportation approved a modified version of Sen. Ashcroft's proposal, S. 648: The Product Liability Reform Act of 1997, which also contained a vicarious liability reform measure. In 1998, S. 648 was replaced by S. 2236: The Product Liability reform Act of 1998, a bipartisan compromise bill negotiated between Senator Slade Gorton, the Clinton Administration, and Chairman Rockefeller. This bill contained a vicarious liability reform provision, but the Senate failed to invoke cloture on the bill, thereby ending prospects of passing a product liability reform measure in the 105th Congress.

During the 106th Congress, Representative Ed Bryant (R-TN) and Senator John McCain (R-AZ) introduced H.R. 1954: The Rental Fairness Act and S. 1130: The Motor Vehicle Rental Fairness, to reform liability of motor vehicle rental and leasing companies. In addition, Senator Spencer Abraham introduced S. 1185: The Small Business Reform Act and Representative James Rogan introduced H.R. 2366, a companion bill; both contained vicarious liability reform provisions. On September 29, 1999 the House Judiciary Committee held a hearing on the Rogan bill and on September 30, and the Consumer Affairs Subcommittee of the Senate Commerce Committee held a hearing on the McCain reform bill (S. 1130). Senator McCain's bill was later approved by voice vote and sent to the full Senate Commerce Committee. Throughout the 106th Congress, the House Judiciary and Commerce Com-



mittees held several hearings and mark-up sessions on H.R. 1954 and H.R. 2366. On February 16, 2000, the House approved H.R. 2366 by a vote of 221–193. The approved bill contained vicarious liability reform language for product sellers, lessors, and renters.

Vicarious liability reform was also debated in the 108th Congress. On April 1, 2004 during the debate on H.R. 3550, the Safe, Accountable, Flexible and Efficient Transportation Act of 2004, Representative Sam Graves (R–MO) offered an amendment to reform vicarious liability laws for rented or leased motor vehicles. After the debate, the amendment failed on a voice vote.

It was in the 109th Congress in which vicarious liability reforms became law. On March 9, 2005, Representative Sam Graves and Representative Rick Boucher (D–VA) attempted to again amend the Transportation Reauthorization bill (H.R. 3) with a provision to reform vicarious liability laws for rented or leased motor vehicles. After a debate on the House Floor, the bipartisan amendment passed the House of Representatives with a vote of 218–201. The next day, H.R. 3 passed the House of Representatives with a vote of 417–9. H.R. 3 was conferenced between the chambers, where House and Senate Conferees retained the vicarious liability language and included it in the final conference product. On July 29, 2005, the House passed the conference bill by 412–8 and the legislation was passed in the Senate 91–4. Vicarious liability reform was signed into law by President George W. Bush on August 10, 2005.

**Elimination of Vicarious Liability Does not Eliminate Liability—Companies Always Provide MFR and Continue to Be Liable for Negligence**

Secondly, there seems to be some confusion regarding the scope of the Graves/Boucher provision. The Graves/Boucher provision does not provide complete immunity for the rental car and leasing industries; these industries are liable for any accidents in which they have acted negligently. Through negligent entrustment, rental car and leasing companies can be held accountable for their actions. These actions include renting to a customer who is visibly intoxicated. Furthermore, even in cases in which a rental or leasing company is not at fault, the Graves/Boucher provision does not alleviate responsibility of rental car and leasing companies of the minimum financial responsibility for each state. Every rental or leased car has the minimum level of insurance as required by the state in which it is rented or leased.

**Hague Service Convention Prescribes Rules for Serving Negligent Foreign Renters**

During the hearing it was asserted that negligent rental car customers can “drive off scot free” from their actions. This is incorrect. Under the Hague Service Convention, a central authority accepts incoming requests for service and arranges for service in a manner permitted within the receiving state, typically through a local court to the defendant’s residence. This system has been in place since 1965 and applies to 60 countries—largely encompassing the developed world in which the overwhelming majority of foreign renters reside.

Thank you again for the opportunity to discuss this important matter with the Committee.

Sincerely,

THOMAS M. JAMES,  
*President and CEO,*  
Truck Renting and Leasing Association.

