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H.R. 2048, THE MOTOR VEHICLE OWNERS' RIGHT TO REPAIR ACT OF 2005

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

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H.R. 2048, THE MOTOR VEHICLE OWNERS' RIGHT TO REPAIR ACT OF 2005

WEDNESDAY, MAY 17, 2006

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:08 a.m., in Room 2123 of the Rayburn House Office Building, Hon. Cliff Stearns (chairman) presiding.

Members present: Representatives Upton, Radanovich, Bass, Terry, Rogers, Otter, Murphy, Blackburn, Schakowsky, Green, Strickland, Gonzalez, Baldwin, Dingell (ex officio).

Staff present: David Cavicke, General Counsel; Chris Leahy, Policy Coordinator; Brian McCullough, Professional Staff Member; Will Carty, Professional Staff Member; Billy Harvard, Legislative Clerk; Jonathan Cordone, Minority Counsel; Jonathan Brater, Minority Staff Assistant; and Chris Treanor, Minority Staff Assistant.

MR. STEARNS. Good morning, everybody.

The subcommittee will come to order.

Today's hearing is the third time in the last 2 years that my subcommittee has addressed the issue of a consumer's "right to repair" their own vehicles. That fact is indicative of how much all of us would like to see a mutually-agreeable, and preferably, a non-legislative solution to this issue. We wanted to provide time for this progress. Unfortunately, the time for a deal has come and gone, and we are now scheduled to have a markup of Chairman Barton's bill H.R. 2048, the "Motor Vehicles Right to Repair Act of 2005" next week.

My colleagues, according to the National Highway Traffic Safety Administration, NHTSA, out of the approximately 250 million vehicles in the United States, about 75 percent are serviced and repaired by independent mechanics from the "mom and pops" to the large franchisees like Midas and Jiffy Lube. It is a market in which Americans alone spend close to $40 billion a year in repair and service of their vehicles. When car manufacturers' warranties run out, usually in 5 years or less, American consumers overwhelmingly choose independent shops

for the car repair they need. Likewise, American consumers choose many of the aftermarket parts, many of which are supplied to independent garages to replace worn OEM or original equipment components. All of this choice and the competition benefits the American consumer.

The issues of information and access addressed in Chairman Barton's bill seem to appear most frequently when working on and repairing newer, more advanced vehicles, some more computerized than the Space Shuttle. It is clear to me, after learning more about the sophistication of these systems and the technicians that service them, that the old shade tree mechanic is now more akin to a rocket scientist than Mr. Good Wrench. And whether it is installing new brake pads, upgrading flash memory, or tuning our favorite motorcycle to get that extra 40 horsepower, new vehicles require new, expensive tools and expertise, not the socket wrench, grease gun, and the dog-eared Chilton's book that your father used to unleash on his clunker on the weekends. As more and more government regulation makes emission standards more stringent, safety systems like airbags and anti-lock breaks more robust, and security systems more intimidating and vault-like, cars are becoming more like supercomputers on wheels than the old-fashioned rides that many of us fondly remember.

My colleagues, the bottom line is that accurate information and the ability to access that information is a necessary capability for any 21st century mechanic who wants to assure that the annoying little "check engine" light stops glowing, whether it is triggered by a catastrophic transmission failure or a simple loose gas cap. The legislation before us today is intended to get us closer to that goal: first, by making sure that the information needed to service or repair the vehicle, that is the fault codes that trigger that annoying little light, is available and accurate; second, by making sure there are available, scan tools, that are needed to access the codes that route your mechanic to the source triggering that little light and that the codes are divined easily through the vehicles internal OBD system; and finally, by making sure that those codes can be cross-referenced accurately with information that is provided by the manufacturer on websites, CD-ROMs, and manual that is specific to the make and model of that car with the glowing "check engine" light so that a fix can be found. Sounds simple, but as we have seen, the devil is in the details. And believe me, trying to find common ground over the details has been more of a challenge than any of us expected it to be.

To get some of those details today, I would like to have each of the witnesses, including Chairman Majoras, the FTC chairlady, to comment during the question-and-answer period on some of the more important and controversial elements of this bill, including: What should constitute

"information" for the purposes of the bill? Fault codes? Engine mapping algorithms? Training information? Two, how should we interpret what is meant by "diagnostic tools and capabilities related to vehicle repair" in section 3 of the bill? Does this mean scan tools? What are the other "capabilities" referring to? How would the FTC enforce this legislation? What resources would be required to implement this bill as it is now written? And finally, would the bill allow States to sue manufacturers under its current language?

These are difficult questions, and we were very respectful of how difficult they are.

I would like to thank our witnesses today, and especially Madame Chairman Majoras for coming, for taking up their valuable time to be here. We appreciate that very much.

I would like to also inform folks that Chairman Barton is a bit under the weather today, and he regrets that he can not be here for this opening period. I assume he might be coming later. We wish him well, and we hope he has a speedy recovery.

And with that, I welcome the Ranking Member, Ms. Schakowsky.

[The prepared statement of Hon. Cliff Stearns follows:]

PREPARED STATEMENT OF THE HON. CLIFF STEARNS, CHAIRMAN, SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

Good morning. Today's hearing is the third time in the last two years that my Subcommittee has addressed the issue of a consumer's "right to repair" their own vehicles. That fact is indicative of how much all of us would like to see a mutually-agreeable, and preferably, a non-legislative solution to this issue. We wanted to provide time for progress. Unfortunately, the time for a deal has come and gone, and we are now scheduled to mark up Chairman Barton's bill, HR 2048, the "Motor Vehicle Owners' Right to Repair Act of 2005" next week.

According to the National Highway Traffic Safety Administration (NHTSA), out of the approximately 250 million vehicles in the United States, about 75% are serviced and repaired by independent mechanics – from the "mom and pops" to the large franchises like Midas and Jiffy Lube. It is a market in which Americans alone spend close to $40 billion a year on repair and service of their vehicles. When car manufacturers' warranties run out –usually in five years or less- American consumers overwhelmingly chose independent shops for the car repair needs. Likewise, American consumers chose many of the aftermarket parts, many of which are supplied to independent garages, to replace worn "OEM" or original equipment components. All of this choice and competition benefits the American consumer.

The issues of information and access addressed in Chairman Barton's bill seem to appear most frequently when working on and repairing newer, more advanced vehicles – some more computerized than the space shuttle. It is clear to me after learning more about the sophistication of these systems and the technicians that service them that the old shade tree mechanic is now more akin to a rocket scientist than Mr. Good Wrench. And whether it's installing new brake pads, upgrading flash memory, or tuning our favorite pocket rocket to get that extra 50 horsepower, new vehicles require new, expensive tools and expertise – not the socket wrench, grease gun, and the dog-eared Chilton's that your father used to unleash on his clunker on the weekends. As more and

more government regulation makes emissions standards more stringent, safety systems like airbags and anti-lock brakes more robust, and security systems more intimidating and vault-like, cars are becoming more like supercomputers on wheels than the old fashioned rides I fondly remember.

The bottom line is that accurate information and the ability to access that information is a necessary capability for any 21st Century mechanic who wants to ensure that the annoying little "check engine" light stops glowing - whether it's triggered by a catastrophic transmission failure or a simple loose gas cap. The legislation before us today is intended to get us closer to that goal. First, by making sure that the information needed to service or repair the vehicle – i.e. the fault codes that trigger that annoying little light - is available and accurate. Second, by making sure that there are available tools - scan tools – that are needed to access the codes that route your mechanic to the source triggering that little light and that the codes are divined easily from the vehicle's internal OBD system. And finally, by making sure those codes can be cross referenced accurately with information provided by the manufacturer – on web sites, in CD ROMs and manuals - that is specific to the make and model of that car with the glowing "check engine" light so that a fix can be found. Sounds simple, but as we have seen, the devil is in the details - and believe me, trying to find common ground over the details has been more of a challenge than anyone ever expected.

To get to some of those details today, I would like to have each of our witnesses, including FTC Chairman Majoras, to comment during the Q and A on some of the more important and controversial elements of HR 2048, including:

- What should constitute "information" for purposes of the bill? Fault codes? Engine mapping algorithms? Training information?
- How should we interpret what is meant by "diagnostic tools and capabilities related to vehicle repair" in section 3 of the bill? Does this mean scan tools? What are the other "capabilities" referring to?
- How would the FTC enforce this legislation? What resources would be required to implement the bill as written?
- Would the bill allow states to sue manufacturers under its current language?

I would like to thank our witnesses here today, especially FTC Chairman Majoras, for coming to offer their views. I also would like to inform folks that Chairman Barton is a bit under the weather today and regrettably will not be able to attend this morning's hearing. We wish him well and a speedy recovery. Thank you.

MS. SCHAKOWSKY. Thank you, Mr. Chairman.

Okay. I appreciate you holding today's hearing on H.R. 2048, the Motor Vehicle Owners' right to Repair Act, of which I am one of the 102 co-sponsors.

I believe this bill addresses the current problem independent repair shops run into when they can not access the technical information they need to work on cars. This bill would also restore consumers' right to choose where they want to take their business.

We made a number of advances in car design and maintenance through the years. Although we have a way to go, cars are safer, more environmentally sound, however, the technological advances have also created some complications for the corner garage and consumers. Having car problems is stressful. Simple repairs are turning out to be not so simple after all. Even getting a diagnosis may prove impossible, and

many have found that they can't take their cars to the mechanics they trust and have been using for years merely because those mechanics can't get the service information they need or they can't get it in a timely fashion. Highly skilled mechanics are being forced to send their business to dealers, because the auto manufacturers have the diagnosis and repair information on lockdown.

According to AAA, consumers spend almost $200 billion annually to repair and maintain the 200 million cars on the road. Seventy percent of consumers take their cars to independent repair shops once their warranty expires. If we don't do something to ensure that the diagnosis and repair information sharing goes more smoothly than it has been, then we are severely limiting consumers' choice and undermining small businesses who already have the deck stacked against them.

I believe it is important to protect the trade secrets and intellectual property of auto manufacturers. The motor vehicle industry is the largest manufacturer in the country, and their innovations have helped fuel the economy. However, I believe that information necessary to diagnose, service, and repair vehicles sold in the United States should be disclosed to car owners, repair shops, and the Federal Trade Commission. I believe the balance between protecting the rights of manufacturers and the rights of the consumers can be found and that H.R. 2048 is on the right track towards striking that balance.

The reason I decided to co-sponsor H.R. 2048 is because a couple of years ago, I met over coffee with a number of small repair shop owners in my district. Those shop owners and mechanics shared their stories about how their business is being driven straight to the dealership because of roadblock after roadblock being thrown up by the auto industry. Even though their shops are more convenient to use and often cheaper, they are losing their customers.

While I was glad to hear that the stakeholders in H.R. 2048 tried to work out an agreement, it is my understanding that an impasse was reached, and that is why we are here today. As is the case in many of these types of battles, consumers are the ones who pay for the industry disputes.

Again, this is ultimately about the consumers for me. Since the industries involved can't work out a solution, then I support moving H.R. 2048 through the committee. We need to ensure that the information provided to the car owners and independent repair shops is easily accessible, accurate, timely, and not priced out of reach.

Again, I look forward to hearing our witnesses' take on the bill.

Thank you very much.

MR. STEARNS. I thank the gentlelady.

The gentleman from Michigan, Mr. Upton.

MR. UPTON. Thank you, Mr. Chairman.

I believe in the old adage that all politics is local, so when this so-called "right to repair" issue first came up, I started asking folks around my district about it, the people that service my car and a number of different repair folks, as well as my constituents. And not one person told me that they had a problem seeking the proper information to repair our autos.

And I attended some hearings on it, read the materials from folks about it. One thing really does stand out in my mind, and that is out of the 500 million non-warranty repairs last year, there were only 57 requests for additional information about the National Automotive Service Task Force were made. Fifty-seven out of five hundred million. It seems to me that a lot of those were resolved as well. Now I have always stood for less government, not more, and I think that this bill, H.R. 2048, could be a bill that is looking for a problem. If it ain't broke, don't fix it. And it doesn't seem to be broken when you have only 57 problems out of some 500 million of us that take our cars to get serviced.

Since I have a little extra time, I might just also ask the chair about a piece of legislation that I helped author and pass on the House Floor with Mr. Markey, which was the Grand Theft Auto video game asking the FTC to investigate as to whether or not problems were there as it was labeled "M for mature" rather than "A for adult". And because it was "M", it got into Best Buy and Target and a whole bunch of different places and became the number one video game in the country. And we passed legislation, a resolution in the House, with nearly 400 votes asking the FTC to investigate as to why it got that label. We are now 10 months later from a vote on the House Floor, passed with wide bipartisan support, and we still have no answer despite a number of phone calls that we have had thinking we would hear some word before Christmas and then Easter. It is now Memorial Day. We are soon to pass 1 year from when we passed this. And I don't know how, for the life of me, if you can't investigate Grand Theft Auto, how you can possibly investigate something that has got 500 million complaints like this.

And I yield back the balance of my time.

[The prepared statement of Hon. Fred Upton follows:]

PREPARED STATEMENT OF THE HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Thank you, Mr. Chairman.

I believe the old adage that "all politics is local," so when this so called "Right to Repair" issue first came up, I started asking around my district about it. I talked to my service station repair folks, my auto dealers, and constituents. And not one person told me that this is a big problem.

Then I attended our hearings on it, read all the materials from folks about it. One things stands out in my mind – out of 500 million non-warranty repairs last year – only 57 requests for additional information from the National Automotive Service Task Force were made. 57 out of 500 MILLION! And it sounds to me like they were all resolved.

I have always stood for less government, not more and I think that HR 2048 is a bill looking for a problem.

I have the greatest respect for my Chairman, but I just have to say – If aint broke, don't fix it!

MR. STEARNS. I thank the gentleman.

The Ranking Member of the Full Committee, Mr. Dingell, is recognized.

MR. DINGELL. Mr. Chairman, thank you for recognizing me.

Good morning to you and good morning to everyone here.

I am pleased we are holding this hearing today on H.R. 2048, the Motor Vehicles Owners' Right to Repair Act of 2005. It was reportedly introduced to help small repair shops.

This appears to be a magnificent cure for a problem that does not exist. And I find myself distressed that with all of the other important business we have at hand here in this committee and in the Congress that we would be fiddling around with something of this quality.

Years ago, I was a senior member of the Small Business Committee, and I was very helpful to my friends in the small business community, generally, and very specifically, in the community of automobile repairs and people in the independent garage industry and so forth. And we addressed their concerns and problems with considerable vigor.

The legislation is a significant improvement over the version we considered last Congress, but the bill may impede competitiveness of American manufacturing at a precarious time for the automotive industry. I am pleased, however, that the hearing is being held, because it will give us a chance to find out whether there is anything here justifying Congressional action. All of the evidence which we have says the automobile industry has been working very hard to meet the concerns of the independent repairmen.

Now it is quite clear that the issue is not as simple as some would make it. The publicly stated objectives of the legislation are laudable. Consumers should be able to choose who repairs their automobiles. I have always taken the position that this is a fundamental consumer right. It is not, however, the bill's stated objectives that I am concerned about. It is the means through which the legislation seeks to achieve its stated objectives and the consequences, whether intended or not, that give me pause. It is possible to help consumers and to assist independent repair shops without jeopardizing the rights and the concerns of automobile manufacturers and their suppliers.

Independent service stations across the Nation have joined with the world's automotive manufacturers to create the National Automobile Service Task Force. This organization was designed as a non-legislative means in which the stated objectives of the bill are and can be achieved.

Mr. Chairman, since the committee last examined this issue, the National Automobile Service Task Force, NASTF, has formalized its organization. It has appointed a Board of Directors. It has hired the Independent National Institute for Automobile Service Excellence to manage day-to-day operations. I am told that the independent service stations are now receiving the information they need to repair all, I repeat, to repair all makes and models of motor vehicles. And that in 2005 there were only 86 requests for assistance made to NASTF. These actions represent meaningful progress. To the extent the effectiveness of this program remains in doubt, we should engage in suitable oversight in order to assure that the laws are faithfully being carried out by the regulatory agencies, but there is no need for additional legislation.

I believe that legislative oversight is a useful tool, and we should certainly use that tool here. But the use of that tool does not simply justify the movement forward towards legislation where none, in fact, is needed.

I look forward to hearing from our witnesses, and I thank you, Mr. Chairman, for your kindness. And I look forward to whatever work this hearing will disclose needs to be done by this committee.

Thank you, Mr. Chairman.

MR. STEARNS. I thank the distinguished member.

Mr. Rogers.

MR. ROGERS. Thank you, Mr. Chairman, and thanks for holding this hearing today.

I want to echo the sentiments of the distinguished member from Michigan, Mr. Dingell, and Mr. Upton as well.

I continue to have serious concerns with this issue and with this legislation. First and foremost, I am concerned that H.R. 2048 is a solution in search of a problem.

Consumers clearly have a right to have their cars serviced at the station of their choice. In fact, today's witnesses lay out in detail the legal arguments supporting that right. We are being told by one party that there is a serious market failure here and that consumers are being denied their legal rights. If that is the case, Mr. Chairman, why have not the FTC nor the DOJ acted? Why have not these same witnesses brought a lawsuit? Or why are they not here today demanding FTC and DOJ action? If what is happening today is already illegal, why do we need a new law?

Perhaps it is because, as this committee has heard repeatedly, there is scant hard evidence that consumers and repair shops are actually unable to gain access to the information needed to repair automobiles.

I have other major concerns as well, Mr. Chairman.

I am also concerned that this legislation could jeopardize the intellectual property of automakers. I am concerned that this change is how intellectual property rights are protected could have a ripple effect throughout the automotive industry, costing jobs in my home State of Michigan.

I am also deeply concerned that the findings section of this legislation, coupled with the tough enforcement provisions of the FTC act, will serve as a boon to the trial bar. It is wholly conceivable that this bill will open a floodgate of litigation against the automakers, parts suppliers, auto dealers, and even certain independent repair shops, depending on size and skill.

Finally, this bill could threaten consumer safety. H.R. 2048 does not provide adequate provisions to ensure that the security data is kept secure. Modern technology has made cars much harder to steal and much easier to track down. H.R. 2048 could well undo this progress.

Again, Mr. Chairman, I again want to join my colleague from the great State of Michigan, Mr. Dingell, in expressing my concern for this bill, especially now. And I certainly would urge that throughout this hearing we come to a quick conclusion that this is as far as this bill should go.

And I yield back the remainder of my time.

MR. STEARNS. The gentlelady from Wisconsin, Ms. Baldwin.

MS. BALDWIN. Thank you, Mr. Chairman.

I am pleased that you are holding this hearing today on the Right to Repair Act, and I am interested in learning from the various perspectives that are going to be represented here today, especially because I come to this issue from a slightly different perspective.

Several years ago, I was contacted from JT Packard, a company in my district that maintains distributed energy supply systems. Essentially, these are backup supply-generating systems that companies use in case of a power surge or a complete loss of power. JT Packard came to me, because they used to perform routine maintenance on this equipment, that is until the equipment manufacturers installed encrypted software codes that only enabled the manufacturer to do the repair. Needless to say, my concern for this company led me to understanding many of the arguments that have been made in support of Chairman Barton's legislation, and as a result, I have been a co-sponsor in this session and the last.

As a co-sponsor, I have seen this legislation in different forms, and I have also seen the industry join together to work on this issue in a way that could possibly have beneficial results, removing the need for government intervention. I was pleased to hear that the National Automobile Service Task Force voted to formally reorganize itself in March of this year, and I am hopeful that it will meet its mission and ensure that timely, accurate, and affordable diagnostic information, tools, and training are provided to independent repair facilities.

As we review this issue today, we must recognize the proactive steps that the industry has taken. At the same time, our top priority must always be the protection of consumers. Gaining access to service information and diagnostic tools should not result in less consumer choice, higher prices, or longer waiting time. And independent auto repair shop owners should not have to fear losing business because of hurdles that block access to vital information.

I look forward to this hearing on how we can work together through this legislation or by other means to address the concerns of manufacturers, service providers, and most importantly, consumers.

Thank you, Mr. Chairman. I yield back the balance of my time.

MR. STEARNS. Mr. Terry. Mr. Terry waives.

Mr. Gonzalez.

MR. GONZALEZ. Thank you very much, Mr. Chairman.

I am going to be brief.

First, with some apologies. I want to assure the witnesses that I will be reading your written statements. I have to leave to attend an 11 o'clock meeting where I need to make a presentation.

Within the past 2 years, I met with who I refer to as my repair and parts people in San Antonio. But even within that group or association, there wasn't really total agreement about the need for legislation. I had some that were asking what would have been my position, what is going to happen and such, but I had others that said, "We simply have not had any problems. We were able to work with manufacturers and others to the extent that we can provide the necessary repairs with the necessary technological information that is needed." To this day, those same individuals at that meeting, and I admire and respect all of them, because what I told them is, "Give me concrete examples of what is going on in the Congressional district regarding the need for this information." I have yet to receive any of that information. The last hearing we had, I again simply indicated, "Give me concrete examples." So I am hoping in today's testimony we are going to have more information forthcoming that clearly demonstrates that we do have this problem out there that needs to be addressed by federal legislation, which would be appropriate.

Anticipatory prospective legislation seldom is very good, because we really don't do well looking into the crystal ball and figuring out how we are going to fix a situation that hasn't already reached some sort of critical mass. Has it, at this point?

Again, I look forward to the testimony. I regret that I won't remain through the whole hearing, but I guarantee you that I will be reading the testimony with a great interest.

And I yield back.

Thank you, Mr. Chairman.

MR. STEARNS. I thank my colleague.

And by unanimous consent, we will have 5 days available for all members to put their opening statement as part of the record.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF THE HON. JOE BARTON, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Mr. Chairman, thank you for holding this important hearing today on H.R. 2048, and the complex issue of information availability and access to auto repair information.

Since introducing this legislation, I have been openly working with all parties to facilitate an agreement that would negate the need for legislation. As I have said many times in the past, my hope has been that the industry would work out that agreement. However, now that these negotiations have not produced a consensus, this Committee is prepared to move the bill. Today, I am glad we have a chance to listen to suggestions that may improve the bill, as we move toward marking it up in the near future.

Let me start by saying that I have a wonderful General Motors plant in my district, in Arlington, TX. And, like most Members, I have local dealers that I hear from occasionally. So this is not a constituency whose views I have failed to hear on the underlying legislation. I want to be clear, I am not out to inhibit the technological advances achieved by our automakers or to give away their trade secrets. The bill is NOT about gaining proprietary information, as some suggest. What it IS about is consumers' choice in auto repair. They should be able to choose where they have their vehicle repaired, and whether they choose aftermarket replacement parts or Original Equipment Manufacturer (OEM) parts.

Computer-controlled technology is an integral part of modern automobile functions and has necessitated new considerations for effective service, repair, and maintenance. Nowadays, car repair usually involves interaction with a car's on-board diagnostic (OBD) computer using specially designed tools. These tools are used to identify an error code, and that code is then linked to information providing the specifics of the problem and the procedures for correcting it.

While current regulations and industry agreements have tried to insure that all the information necessary to make use of the OBD system is provided to the independent repair shops, there are still holes in the system. Further, there is no agreement among the parties about how to resolve disputes. What is the recourse for independent repairers and consumers—or the penalty for the automaker—if the information and tools are not made available to them? Also, there is still a disagreement over the governance structure of the National Automobile Service Task Force (NASTF). Because this process seems to have reached an impasse, I believe H.R. 2048 is necessary.

H.R. 2048 is a very straightforward bill. It directs the FTC to write rules within one year requiring auto manufacturers to make certain necessary repair information available.

The same service and training information must be made available to all independent repair shops in the same way that it is given to franchised dealerships. Furthermore, the same diagnostic tools and capabilities that are made available to franchised dealerships must be made available to independent repair shops as well. The FTC would treat a failure to do so as an unfair and deceptive trade practice.

Importantly, H.R. 2048 makes sure that the bill should not be considered to be a requirement to disclose trade secrets, nor should it be interpreted to require the public disclosure of any information related to the design and manufacture of motor vehicle parts. And finally, the FTC rulemaking is restricted from prescribing rules that would interfere with the authority of or conflict with any rules prescribed by the EPA related to emissions control systems.

I appreciate the willingness of all the stakeholders to sit down and try to work this out, but given the apparent roadblock, it is time to move this bill.

I want to welcome Chairman Majoras back to the Committee and thank her for offering the FTC's perspective today. I appreciate all our witnesses' participation, and I look forward to hearing suggestions about how to perfect the legislation.

Thanks again to you, Mr. Chairman, and I yield back the balance of my time.

PREPARED STATEMENT OF GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

I'd like to thank the Chairman and Ranking Member for holding these hearings today. I think this issue is an important consumer issue and has challenged parties on both sides of this issue.

I am disappointed that both sides could not reach an agreement that would have prevented moving forward with this legislation.

Before we held a hearing on this bill over a year ago, I met with 20 repair shop owners from my district asking me about this legislation and what Congress could do.

Since then, I have received a list of almost 100 shops in my district voicing concerns over having access to information that would enable to repair today's high-tech automobiles.

Like most large cities in the United States, Houston has as many independently owned repair shops as we do shade-tree mechanics. However, with the level of technology used in today's automobiles, the shade tree mechanic is often led to their nearest repair center which is most often an independent shop.

When I got my first car, I was able to buy a Hanes or Chilton manual that showed how the car could be repaired.

These manuals include wiring diagrams, clock times to adjust the timing, and torque specifications for everything from the lug nuts on the wheels to the bolts securing the engine block.

Things have changed and computer systems in newer vehicles control everything from Air bag deployment to emissions.

I'm supporting this bill because I'm concerned about the consumer. If my constituents own a newer model car or truck, they should be able to take it to their local mechanic to be repaired. High tech advances shouldn't make repairing your vehicle at a neighborhood shop out of reach.

The goal of this legislation is simple: auto makers should be able to supply information to local repair shops so those shops can repair a vehicle. However, auto makers should also be fairly compensated for this information due to their investment in developing and engineering the cars and trucks in the first place.

Beyond that, there is concern I have regarding trade secrets and intellectual property. I believe being able to repair your automobile at the shop of your choice is important.

However, I do not want to see automakers and engineers here releasing information to people in China to reverse engineer high technology in our automobiles.

Another concern I have is with the National Automotive Service Task Force. The 86 complaints filed in the last 18 months does not seem to reflect the urgency of the problem.

I want to make sure that consumers can get their cars repaired, independent shops have access to what they need to make the repairs, and the manufacturers can protect their trade secrets and intellectual property.

Thank you Mr. Chairman and I yield the balance of my time.

PREPARED STATEMENT OF TED STRICKLAND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Good morning. Thank you Mr. Chairman, and thank you for holding this hearing. I believe this issue is important to all of our constituents because it will allow car owners greater freedom to choose auto repair shops. This is important for driving down prices for car repairs, which, as we all know, can be extremely high.

In my own district, public transportation options are few and far between. Most of my constituents depend on their cars for all of their transportation needs. Affordable car maintenance is vital for ensuring that my constituents are able to get to work and bring their children to school. I believe H.R. 2048 will help to make car repairs more affordable by allowing independent auto repair shops to compete effectively with dealerships for car repair and maintenance jobs. Currently, independent mechanics may not have access to the necessary software updates that manufacturers share with dealerships. In fact, according to some studies, more than 50% of independent mechanics have had to turn a customer away because they simply couldn't access the information they needed to fix the customer's car. Therefore, car owners are often forced to choose the dealership for repairs, despite the fact that dealerships can be more expensive and less convenient than local independent mechanics.

In addition to driving down prices for auto repair, I believe this bill has the potential to increase accessibility of high-quality car maintenance in rural areas and small towns. In Ohio's Sixth District, if a family car breaks down, many of my constituents currently have to worry not only about how to pay for the repair, but also how to get their car to a dealership or mechanic that can repair it. For example, a car owner living in Gallipolis, Ohio, may have to travel over 40 miles, to Athens, Ohio, to reach their closest dealership. For a family relying on a single car, this could mean missed school and work, not to mention the expense and inconvenience of the travel.

I understand that many of my colleagues have legitimate concerns about the need to protect intellectual property. We certainly do not want to force any car manufacturer to reveal their private manufacturing process or trade secrets. It is my understanding that the bill clarifies that auto manufacturers would be required to provide only the information currently provided to car dealerships – no more and no less. The bill then, is actually consistent with current Clean Air Act emissions requirements, and should not present a new threat to intellectual property protection. However, I know this issue continues to cause concern for the auto manufacturers and for many of my colleagues, and I hope that some of today's witnesses will further address this issue.

Ultimately, I am hopeful that this hearing can shed some new light on the issue, and allow all parties to come to an agreeable conclusion. This can be accomplished more quickly without legislation; however, should legislation become necessary, I believe H.R. 2048 is a good, bipartisan bill. I am a cosponsor of H.R. 2048, and I cosponsored similar legislation in the 108th Congress. I look forward to hearing today's testimony.

MR. STEARNS. With that, we will move to our first panel: the honorable Deborah Platt Majoras, who is Chairwoman of the Federal Trade Commission. I welcome her. And thank you for your opening statement.

MS. MAJORAS. All right. Mr. Chairman--

MR. STEARNS. Move it a little closer to you, too, if you don't mind.

MS. MAJORAS. All right. I would be happy to. Thank you.

MR. STEARNS. There you go.

STATEMENT OF HONORABLE DEBORAH PLATT MAJORAS, CHAIRMAN, FEDERAL TRADE COMMISSION

MS. MAJORAS. Mr. Chairman, Madame Ranking Member, I am Deborah Majoras, Chairman of the Federal Trade Commission. I appreciate the opportunity to appear before you today to discuss H.R. 2048. The views expressed in the written testimony represent the views of the entire Commission. My oral testimony and responses to your questions reflect my own views and may, but do not necessarily, reflect those of the Commission or any other individual Commissioner.

Over the past couple of decades, as this subcommittee has recognized, automobile manufacturers have dramatically improved the cars we drive. Today's cars are safer, more reliable, and offer features unheard of even 20 years ago. These improvements have precipitated changes in the automotive repair aftermarket where sophisticated computer programs are now as essential as socket wrenches and screwdrivers.

Repair shops, therefore, increasingly need access to computer codes and high-tech codes to conduct their businesses, and they are concerned that they are not getting complete and timely access.

Automobile repair is important to American consumers. U.S. consumers spend billions of dollars each year to repair and maintain the millions of cars currently on the road. We are a Nation on the go. And certainly I understand any frustration American consumers may feel if they can not have their cars repaired in a convenient and timely manner.

H.R. 2048 would require automobile manufacturers to promptly disclose to a vehicle owner or a repair facility of the owner's choice the information necessary to diagnose, service, or repair the consumer's car. In particular, it requires manufactures to provide equal access to service and training information to both dealers and independent shops on a non-discriminatory basis, including activation of controls and diagnostic tools and capabilities. It also requires manufacturers to provide service and training information and manufacture diagnostic capabilities to companies who make tools to compete with the manufacturers. Auto

manufacturers would be exempt from providing information that constitutes a trade secret unless the information has already been provided to a dealer or another repair facility. The proposed legislation requires the Commission to promulgate the regulations, to prescribe the manner in which the information would be provided. This is a much-improved version of the bill, and we appreciate Chairman Barton's and Chairman Stearns' willingness to consider our concerns in drafting the current legislation.

Despite these improvements, the Commission continues to believe that a voluntary, self-regulatory approach is the best solution to the issues that have been raised in this area. Self-regulation could address disclosure issues with greater speed and more flexibility than can government regulation.

Despite the prodding and considerable patience of Members of Congress, the automobile manufacturers and aftermarket repair shops have, to date, been unable to work together to resolve the matter. And I share the frustration of many members with the parties' failure to reach a final agreement.

In August and September of last year, at the direction of Chairman Barton and Senator Graham, representatives of the automotive manufacturers and independent repair shops met with the Better Business Bureau mediator and Commission staff for more than 60 hours to try to reach a voluntary agreement. Some progress was made, including agreement that the creation of an independent National Automotive Service Task Force board was the first step to resolving the remaining issues. Since last summer, the parties' failure to build on that success is troubling. My understanding is that the CARE Coalition and the Auto Alliance have not had a single meeting since the conclusion of those talks.

I believe it is in the interest of American consumers that both sides take responsibility and sit down in earnest to hammer out a solution. They claim they care most about consumers. If that is correct, they will work harder at this and not continue to look to the government to solve what can be individual disputes in the marketplace on a going-forward basis. I will grant that that is not easy, because these issues are more complicated than they appear, but that may be an even greater reason which underscores why it would be so difficult for one agency with no experts in auto repair to solve these individual issues.

If, though, you determine that legislation is appropriate, we believe that the parties' points of agreement should receive serious consideration. For example, in their discussions, both sides agreed on many core issues, such as the strengthening and funding of the NASTF process, setting up dispute resolution procedures, and providing some remedies for a third-

party dispute resolution program. In particular, the parties reached a general agreement to use the NASTF organization to arbitrate disputes over access to repair information and tools and to mete out consequences for a failure to meet the standards. These points of agreement could provide the basis for a solution.

One final point, I just would like to address Congressman Upton's point. We have opened the Grand Theft Auto investigation as a law enforcement investigation, not just simply as a Congressional inquiry. I know that he has not been happy that investigation has not been completed. I am not particularly pleased about it, but unfortunately, I am not at liberty to tell you what has happened along the way, because it is a law enforcement investigation. I can only assure you that we have been working very hard on the investigation, and I do think that soon we will be able to publicly explain what we found and where we are.

I thank the subcommittee for giving the FTC an opportunity to provide its input today. We look forward to continuing to work with this subcommittee and with all of the stakeholders.

And obviously, I am happy to answer your questions.

Thank you very much.

[The prepared statement of Hon. Deborah Platt Majoras follows:]

PREPARED STATEMENT OF THE HON. DEBORAH PLATT MAJORAS, CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. Chairman, Ranking Member Schakowsky, and members of the Subcommittee, I am Deborah Platt Majoras, Chairman of the Federal Trade Commission ("FTC" or "Commission").[1] I appreciate this opportunity to discuss H.R. 2048, the "Motor Vehicle Owners' Right to Repair Act."

The Federal Trade Commission's mission is to enhance consumer welfare and protect competition in broad sectors of the economy. The FTC enforces the Federal Trade Commission Act[2] and other laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers, and seeks to do so without impeding legitimate business activity. The agency has responsibilities under more than fifty federal laws, including the Controlling the Assault of Non-Solicited Pornography and Marketing Act,[3] the Fairness to Contact Lens Consumers Act,[4] and the Fair and Accurate Credit Transactions Act.[5] The FTC also promotes informed consumer choice and public understanding of the competitive process because an informed consumer is an empowered consumer.

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[1] This written statement presents the views of the Federal Trade Commission. Responses to questions reflect my views and do not necessarily reflect the views of the Commission or any other Commissioner.

[2] 15 U.S.C. §41 *et seq.*

[3] 15 U.S.C. § 7701 and implementing regulations.

[4] 15 U.S.C. § 7601 and implementing regulations.

[5] Pub. L. No. 108–159, 117 Stat. 1952 (Dec. 4, 2003), codified at 15 U.S.C. § 1681 *et seq.*

The FTC is currently hard at work reviewing its Appliance Labeling Rule pursuant to Section 137 of the Energy Policy Act of 2005[6] and is on track to meet rigorous Congressional deadlines.

The Commission's work is critical to protect and strengthen free and fair markets in the United States. Among the Commission's accomplishments are the implementation and enforcement of the National Do-Not-Call Registry, the protection of the availability of lower-cost prescription drugs, the halting of deceptive or abusive lending practices, the elimination of unfair or deceptive practices in e-commerce, and the challenge of mergers and acquisitions that likely would harm competition.

Auto repair is an important service for U.S. consumers. U.S. consumers spend billions of dollars each year to repair and maintain the more than two hundred million cars currently on the road.[7] Consumers thus have a significant interest in automobile repair and maintenance markets that operate effectively and efficiently, consistent with safety and other quality standards.

For some time, Chairmen Barton and Stearns, and this Subcommittee have considered ways to ensure that independent car repair facilities and vehicle owners have access to information and tools needed to diagnose, service, or repair vehicles.

As the Commission has previously noted, such access is not as easy or inexpensive as it once was. Auto manufacturers have adopted sophisticated technology to improve the performance, comfort, safety, and security of their products. This technology requires expensive computerized tools to diagnose and repair problems, as well as knowledge of particular software access or computer codes. Independent repair shops claim that it can be difficult to acquire all of the equipment it may need to repair all makes of cars, or to easily access all of the information required to make timely repairs. Generally, the marketplace will provide strong incentives for automobile manufacturers to ensure that their customers have an appropriate range of repair options because the manufacturers depend on repeat purchases of their products. With the increasing sophistication of automobiles, however, independent repair shops have been concerned about continued access to the high tech information and tools they need to repair motor vehicles.

H.R. 2048

To address these concerns, last May, Chairman Barton and Representatives Towns, and Issa introduced H.R. 2048. This legislation would require automobile manufacturers to promptly disclose to a vehicle owner, or to a repair facility of an owner's choice, the information "necessary to diagnose, service, or repair" the owner's car. In particular, it requires manufacturers to provide equal access to service and training information to both dealers and independent shops on a non-discriminatory basis. The information would include activation of controls, and diagnostic tools and capabilities. Auto manufacturers would be exempt from providing any information that constitutes a trade secret unless that information already has been provided to franchised dealerships or other repair facilities. The proposed legislation also would require the Commission to promulgate regulations to prescribe the manner in which the information would be provided.

A violation of this regulation would constitute an unfair or deceptive act or practice in violation of Section 5 of the FTC Act[8] and would be treated as a violation of a rule defining an unfair or deceptive act or practice.[9] Violations would, therefore, be subject to both civil penalties and injunctive relief.

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[6] Pub. L. No. 109–58, 119 Stat. 594 (Aug. 8, 2005). Section 137 of the Energy Policy Act of 2005 amended the Energy Policy and Conservation Act of 1975 ("EPCA"), 42 U.S.C. § 6291 *et seq.*

[7] U.S. Census Bureau, STATISTICAL ABSTRACT OF THE U.S. (2006).

[8] 15 U.S.C. § 45.

[9] 15 U.S.C. § 57a(a)(1)(B).

This bill is the successor to a bill from the prior Congress, H.R. 2735. The Commission appreciates the willingness of Chairmen Barton and Stearns, and the Subcommittee to consider the concerns of the Commission and its staff in drafting the new legislation.[10] Among other things, H.R. 2735 required the Commission to review massive amounts of highly technical information on an ongoing basis to determine whether particular information is entitled to trade secret protection. H.R. 2048 has removed this potentially weighty burden. Other important revisions include eliminating the broad requirement to disclose information of any kind used for diagnosis, repair, or other services in favor of ensuring equal access to information on an equal basis by both dealers and independent shops; and authorizing greater flexibility in the manner in which information is provided, allowing disclosures to conform to legitimate industry needs and practices.

To date, a comprehensive voluntary solution to the issue of information provision has proven elusive. The Commission is disappointed that, despite efforts to bring those on each side of this issue together to reach a mutually agreeable solution, the parties have thus far been unwilling to make the compromises necessary to resolve the matter. Last year, Chairman Barton and Senator Graham urged representatives of the independent auto repair facilities and automotive manufacturers to try to reach a voluntary agreement for the provision of service information. In August and September 2005, manufacturer and aftermarket representatives met for more than sixty hours of discussions facilitated by the Council of Better Business Bureaus ("CBBB") and attended by Commission staff. In these discussions, the parties looked to the information-sharing structure created by the National Automotive Service Task Force ("NASTF")[11] to provide information, training, and tools to automotive service professionals.[12] In the course of their discussions at the CBBB, both sides looked to improve the NASTF structure to streamline the process and provide the necessary support to technicians who face problems obtaining information.

Although the parties' negotiations resulted in some significant areas of agreement, the parties failed to develop fully a mutually agreeable solution. The parties continued to have difficulties in reaching agreement regarding a number of issues, including (1) certain aspects of the information that the automobile manufacturers would be required to provide independent auto repair facilities; (2) the manner of restructuring and governing NASTF to ensure that all interests were represented in a balanced matter; (3) the mechanism for resolving disputes regarding tools, including tool costs; (4) the calculation of monetary remedies for aggrieved parties; (5) the penalties, if any, to be assessed against a non-compliant manufacturer; and (6) a means of providing key codes to the aftermarket without compromising vehicle security.

Last November, the Commission testified before this Subcommittee to discuss the efforts of the manufacturers and aftermarket representatives to reach an accord. We expressed our disappointment that the parties were unable to come to a final agreement and our hope that the parties could eventually reach consensus.

One key area of agreement between the parties was the creation of an independent NASTF board to oversee the information sharing process. Significantly, both

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[10] Some of these concerns were expressed in a letter from the Commission to Ranking Member John D. Dingell, October 8, 2004.

[11] NASTF was formed by a group of automotive trade associations to aid in the provision of timely service information needed by independent repair facilities. Members include the Alliance of Automobile Manufacturers, the Alliance of Automotive Service Providers, the Automotive Aftermarket Industry Association, and the Associated Locksmiths of America.

[12] In addition, third-party information providers, such as ALLDATA and Mitchell, can provide useful services to automobile repair facilities. The amount of auto repair data available is voluminous and not always easily accessible. By packaging data for sale, third-party information providers can allow repair facilities to access necessary technical information with the speed the marketplace demands.

manufacturers and aftermarket representatives agreed that if they could concur on board membership, that board could resolve other areas of dispute. The parties, however, did not then agree on the composition of the board.

We continue to believe that the best approach to resolve particular disputes between the parties, including the determination of the composition of any governing board, should be decided and implemented by industry participants rather than the government. Such an approach is preferable because the parties' full faith in the board is imperative for it to accomplish the goals of a self-regulatory process, and that full faith would best be obtained by consensus in determining its composition.

While the parties still have not succeeded in resolving their disputes and developing a comprehensive solution to the issue, the Commission staff has been informed that NASTF recently elected a Board of Directors with the mission of providing automotive service information, training, and diagnostic tools and equipment to automobile repairers. NASTF's Board includes representatives from the Equipment and Tool Institute, the Automotive Service Association, the Alliance of Automobile Manufacturers, and the Associated Locksmiths of America. NASTF also has secured funding for its program. Although this is a unilateral action, it may provide a first step toward a mutually acceptable agreement.

We understand that any ultimate solution that does not involve the consent and participation of all the parties is not a perfect solution. We, therefore, continue to encourage the parties to initiate and take the lead on further discussions to try to reach a mutually satisfactory resolution that reflects the parties' consensus. Commission staff would be willing to attend those discussions if the parties feel that our presence would aid them in reaching agreement.

If Congress determines that legislation is appropriate, the Commission believes that elements on which the parties were able to reach agreement should receive consideration throughout the ongoing legislative process. For example, in their discussions, both sides agreed on several core issues, such as strengthening and funding of the NASTF process, many remedies for a third party dispute resolution program, and dispute resolution procedures. In particular, the parties reached a general agreement to use the NASTF organization to arbitrate disputes over access to repair information and tools, and mete out consequences for the failure to meet the standards for providing information. Such an area of agreement could provide the basis for a solution to this issue.

Mr. Chairman, members of the Subcommittee, thank you for providing the Federal Trade Commission the opportunity to appear before this Subcommittee. We look forward to continuing to work with you.

MR. STEARNS. Thank you.

I will start with my first questions.

Did I hear you say that should the committee mark this up, and if, somehow, this bill passed, that you really don't have the personnel and the people right now to enforce this bill, as it is written? Is that what you are saying? You don't have the specialized people. So your agency, as it presently exists today, could it enforce this bill?

MS. MAJORAS. Well, I don't want to go so far as to say we could not enforce the bill.

MR. STEARNS. But you sort of alluded to the fact you don't have the people with this esoteric knowledge of dealing with things like this.

MS. MAJORAS. Sure. For example, Mr. Chairman, we are down the road. We have promulgated some regulations, and we have now

received a complaint that the manufacturers have not complied with the regulations in the statute, and there is a he said/she said going on. And we have to sort out now who is right in this dispute. And if the dispute could be, you know, "We needed this tool to fix this and we don't have it," we certainly would have to hire experts to help us if those are the types of disputes that end up being brought before us, because it is true that this has become quite complicated. That is why we are sitting here. And for us to find out who is right or wrong based on what tools and information are necessary to fix a car, no, we don't know how to fix a car.

MR. STEARNS. So it would be fair to say today you don't have the resources at the Federal Trade Commission to implement this bill? That would be a fair statement?

MS. MAJORAS. If individual complaints actually do come to us that we have to resolve, there could be instances in which we would not, yes.

MR. STEARNS. I am interpreting that as a yes. Okay.

Secondly, if you do not now have the resources to effectively handle this bill, are you getting many complaints today? You mentioned one right now. Have you gotten any complaints in the last year?

MS. MAJORAS. We have looked, and we have about 500 complaints that relate to auto repair, but in looking at--

MR. STEARNS. Is that over a year, 500?

MS. MAJORAS. Since January, but none of them were on this issue.

MR. STEARNS. Okay. Okay. So you have had 500 complaints since January of this year. None of them have dealt with owners' right to repair, which is the subject of this bill?

MS. MAJORAS. Correct.

MR. STEARNS. And how many complaints did you get that are pertinent, applicable to the owners' right to repair of those 500? How many would you count?

MS. MAJORAS. None that we know of.

MR. STEARNS. Okay. Would it be fair to say that right now the Federal Trade Commission has had no complaints filed in this area of this discussion this morning?

MS. MAJORAS. Well, since January, to be sure, I can't tell you in years past that this has not been--as you know, this wasn't an issue that we brought to the committee because we were getting a lot of consumer complaints, so I can't tell you there has never been one before this year.

MR. STEARNS. No. But out of the 500, how many can you identify as complaints that would be applicable to this hearing?

MS. MAJORAS. I can't identify any.

MR. STEARNS. Any? None?

MS. MAJORAS. Correct.

MR. STEARNS. Well, I think there are two statements you have said that are pretty significant here this morning, one, that you don't presently have the resources at the Federal Trade Commission to handle this, because it is quite esoteric when you get into, for example, engine mapping, algorithms, fault codes, training information, something like that. One of my questions is what constitutes information for purposes of this bill. I mean, I have a little trouble saying to you, "Can you answer these questions?" because they are quite esoteric, but you have indicated that, one, you don't have the resources right now, and two, you have received no complaints, that you are aware of, as chairwoman of the Federal Trade Commission.

MS. MAJORAS. Correct.

MR. STEARNS. Well, another one is how should we interpret what is meant by "diagnostic tools and capabilities related to vehicle repair" in section 3 of the bill? Does this mean scan tools? What are the "other capabilities" referring to? That is quite an esoteric question. I am not sure you could answer it. I am not sure that anybody up here could answer it. And would it be fair to say that you are not in a position to answer that question?

MS. MAJORAS. I cannot answer that question today.

MR. STEARNS. No, I understand. I understand.

How about this question? Would the bill allow States to sue manufacturers under its current language?

MS. MAJORAS. I don't believe it allows the States.

MR. STEARNS. Okay.

MS. MAJORAS. No.

MR. STEARNS. Well, I have a series of four questions, and, you know, basically the only question you can really answer is you don't have the ability to enforce this legislation, you don't have the resources, and two, you have had no complaints.

Let me ask you this, and maybe you could be more candid. Do you think the committee should revise this bill in any way? Are there suggestions from your department to reflect anything that we should do to change this bill?

MS. MAJORAS. Well, if you move forward with the bill, I would think about taking the points on which there have been agreement among the interested parties and consider how, perhaps, they could be incorporated, because we have always thought that these are the folks with the expertise. These are the folks who know what is going on here. What they could decide mutually would be a good step forward. And so if we go forward with legislation, that would be one thing that I would consider.

MR. STEARNS. I am going to ask you my last question, and it is also a little difficult for you to answer, because it is making a personal observation and opinion here. Does the legislation expose manufacturers to disclosure of proprietary secrets or technology? Is the savings clause for trade secrets sufficient to protect secrets? Is that something you or someone on your staff could answer? If you can't answer it this morning, you could provide a written reply to us.

MS. MAJORAS. Yes, we can provide a written reply. I think--

MR. STEARNS. Because that is one of the key areas here, the idea of disclosure of proprietary secrets or technology is being argued about in this debate, and if you could give us, you know, what your opinion is, that would be helpful.

MS. MAJORAS. Sure, because there is a difference, of course, Mr. Chairman, between trade secrets and intellectual property. And so there has been some question raised whether some of the tools provisions in this bill would require exposure of intellectual property. So we would be happy to write an answer for you that explains that further.

MR. STEARNS. Okay. My time has expired.

The Ranking Member, Ms. Schakowsky.

MS. SCHAKOWSKY. Thank you very much. I appreciate your being here.

Let me just say that I think that if there is a real problem, that it is never sufficient to say, "Well, we don't have enough. The reason for not doing it is because we don't have enough resources." I mean, I think, then, that is a separate issue that we may have to deal with. If you are saying that it is not enough of a problem and that there are other mechanisms to deal with it, I think that is a different issue. And so, you know, which is it?

MS. MAJORAS. Well, in truth, we don't know. We don't fully understand yet the scope of this problem. We were brought into the debate when legislation was already underway, and when we have asked for more specifics on the scope of the problem, we haven't gotten many specifics. So that is harder for me to say. But it--

MS. SCHAKOWSKY. But weren't you part of some of the conversations about the--

MS. MAJORAS. Oh, surely we were.

MS. SCHAKOWSKY. Okay.

MS. MAJORAS. We were part of the mediation process.

MS. SCHAKOWSKY. Right.

MS. MAJORAS. Absolutely. We were willing to take on faith from this subcommittee. Of course, we will help with this. We will help this. The subcommittee believes it is a problem, and so we were involved. My point is not so much, "Gosh, you know, I just don't have the people

to do that." Obviously, it is your job to decide what you want me to take on, and we will do it. The point, though, is that one of the reasons we continue to push for a self-regulatory solution and we have a lot of experiences with self-regulatory solutions, is because if we are looking at something where even members of the industry, because of differing interests, because of different things that have happened and so forth, and because of the difficulty of this problem, are saying, "We can't get it right together." My only point is it may be difficult for those of us who actually aren't working in this industry to do it. Now granted, when you have a law enforcement stick, I realize that sometimes people suddenly get more reasonable. Of course, I understand that that is what we do. But nonetheless, what we really want here is speedy and efficient fixing of cars. That is what we really want. We don't want a lot of lawsuits. And so my point is that if they could come up with, and what we have been pushing for them to come up with, is a solution that can make that happen in a real-time basis, that is what is really going to work for consumers, and that is what is really going to resolve their frustration.

MS. SCHAKOWSKY. You said that you haven't gotten complaints, but I know that you referred to the 60 hours of discussions with the Better Business Bureau. Apparently, they have received complaints, is that not correct?

MS. MAJORAS. I don't know whether the Better Business Bureau has or not. I have never heard that. I know, you know, CARE has told us about complaints that they know about, but I don't recall the BBB telling us that they had. The BBB often serves as a mediator in such situations, which is why we suggested that they be brought in.

MS. SCHAKOWSKY. Right. In 2004, the Federal Trade Commission sent a letter to our committee spelling out a number of the problems with the predecessor H.R. 2735, and you mentioned that there were a number of revisions that you applied. So what is your opinion of this version of the bill?

MS. MAJORAS. The opinion is it is much improved, but we would still prefer to see a self-regulatory solution.

MS. SCHAKOWSKY. Okay. And as I said last year, you did participate with the stakeholders in an attempt to create this self-regulatory program. In a letter addressed to the FTC at the end of the discussions, the CBBB concluded that there were a number of outstanding issues that would need to be resolved for a self-regulatory program to be created. Do you think that H.R. 2048 addresses those issues? What would the bill need to do? If we were doing a bill, what would it need to do to address the problems that are still outstanding?

MS. MAJORAS. Well, it doesn't address the issues specifically, and of course, some of the agreement that was reached and some of the

disagreements that went to that are about having this board that would be able to try to resolve disputes in real time. And so one thing that the legislation could look at is whether Congress could establish that sort of a board.

The other thing that I think needs to be resolved is exactly what are we trying to do here. There is an issue. The one that is talked about is we need to get the information to the independents so they have the information to fix the cars. The tools issue, though I have learned, is a different issue, and this is shops wanting to be able to purchase tools cheaply and therefore wanting to put terms on what could be charged by the auto manufacturers. That, I understand, was a pretty significant issue in the talks as well, and I think to prevent problems down the road, that would probably need to be addressed perhaps more specifically in this bill.

MS. SCHAKOWSKY. Thank you

MS. MAJORAS. You are welcome.

MR. STEARNS. The gentleman from Nebraska, Mr. Terry.

No questions.

Mr. Dingell.

MR. DINGELL. Mr. Chairman, thank you.

Madame Chairman, welcome to the committee.

MS. MAJORAS. Thank you.

MR. DINGELL. The Commission has jurisdiction over the following items: consumer protection, unfair and deceptive practices in trade, anti-competitive practices, actions which constitute monopoly or are in restraint of trade or tending to the restraint of trade or tending towards monopoly. So there is broad authority in the Federal Trade Commission to address questions of this kind if that needs be done, is that not correct?

MS. MAJORAS. Correct, if it rose to the level of an anti-trust violation. That is correct.

MR. DINGELL. I want to be sure, you said correct.

MS. MAJORAS. Correct.

MR. DINGELL. Now I want to be very clear here. I heard you tell the chairman that you have had no complaints in any of these areas, and you have had no complaints about the subject matter which the bill might address. Is that correct?

MS. MAJORAS. None this year. I can't speak for forever in the past, but it is--

MR. DINGELL. Since January 1?

MS. MAJORAS. Correct.

MR. DINGELL. Now then, let us address the question prior to January 1, would you have any complaints about behavior which would contravene the context of the legislation before us?

MS. MAJORAS. We are not aware of any. We haven't gone back in past years for our entire database.

MR. DINGELL. Would you, as a kindness to me and the committee, and in the interest of having an adequate record, please do that and find out how many complaints you have had in a reasonable time prior to January 1 so that we might evaluate whether or not there is anything going on here of significance that requires legislative action by the Congress?

MS. MAJORAS. I would certainly like to do that for you. Let me just check, because have hundreds, now we have millions of complaints of--

MR. DINGELL. Madame Chairman, I am not asking for excessive actions on your part. I am asking--

MS. MAJORAS. All right.

MR. DINGELL. --only for your best efforts.

MS. MAJORAS. All right.

MR. DINGELL. I am satisfied that you will give that to us.

MS. MAJORAS. We will always make our best effort, sir, of course.

[Response appears at the end of the hearing record.]

MR. DINGELL. I want you to know, I have great respect for you and also for the Commission.

MS. MAJORAS. Thank you.

MR. DINGELL. Mr. Chairman, I thank you for your courtesy to me.

I thank you, Madame Chairman.

MR. STEARNS. I thank the gentleman.

Mr. Murphy is recognized.

MR. MURPHY. Thank you, Mr. Chairman.

Just a couple of questions. As I have been meeting with constituents, whether they are auto dealers or independent repair shops, on this, there are a number of issues that continue to come out, which I am wondering, in your reading of this bill, does this address that. One is the issue of parts, and that is that manufacturers of the automobiles make their own parts, and yet I am getting a sense from some other suppliers that they would like the ability to build or access to build aftermarket parts and provide a competitive price. What I am hearing from auto dealers and manufacturers is they made it. They would like people to use this quality part, and they don't want to be responsible for someone using something that could be secondary. A second issue is the procedures for repair, and this can be anything from how to take care of something in the complicated system of an automobile to very often an electronics issue. For example, a body shop may repair the car, but now the lights on the panel are still on and something else is not working, and they need to take that car, literally drive it over to an automobile dealer, have the buttons reset with their software, and also know how else to do that, and

they feel they can't get that information. And the third one is just the software for the diagnostic analysis of the problems that a car may be having that does not operate effectively. So it is the parts, the procedures for repair, and the software for the diagnostic analysis. Do you feel that, from your review of this legislation, this bill addresses those kinds of concerns adequately, or is there something else we should be looking at in the wording of that legislation?

MS. MAJORAS. Well, I think on the first issue, I think parts are not what are addressed here. It is the diagnostic tools. But I think it is the same sort of issue, as I understand it. Generic makers of parts, but also diagnostic tools, sell them more cheaply, typically, than do the manufacturers, and I understand that those in the aftermarket want to make sure that reasonable prices are charged to them. And what I can't tell exactly, the bill here uses the phrase "for reasonable business means". And I am not sure whether that is a sort of pricing mechanism or not. I am not recommending one, but I am not sure about that.

On the electronic information, my understanding is that that is exactly what this bill is intended to get at and on a non-discriminatory basis, this would need to be provided.

And software diagnostics, I may have just addressed, sir, when I addressed your question on parts, I believe.

MR. MURPHY. And then let me ask another question or two. I am laying those out as things you could perhaps get back to us on. I recognize a lot of this is going to need further analysis. But you had addressed the chairman's questions. Basically, you said you have not received direct complaints about these issues. Would they go to another agency or some other group if there were complaints on these besides the Federal Trade Commission?

MS. MAJORAS. They might go to another group. I am sorry. I can't remember the name. I don't believe it is a government agency. It is possible that they wouldn't--

MR. STEARNS. Will the gentleman yield?

Is it possible that they would go to NHTSA, the National Highway Safety Commission, Madame Chairwoman? Would they go there, perhaps, instead of you or to the Consumer Products Safety Commission?

MS. MAJORAS. I don't believe the Consumer Products Safety Commission unless there was truly a safety issue with the particular part of the car. It is possible. The National Association of Consumer Agency Administrators often have auto repair issues, I understand, on the top of their complaint list. And that is another possible area. But Mr. Chairman, I am not aware that NHTSA collects such complaints.

MR. MURPHY. Thank you, Mr. Chairman.

It was just one of those issues that I would hope, in your review, if there are other areas where complaints may be occurring, wherever that might be. Even if they were from some of the professional organizations that are out there, it would be important to have accurate information on those issues. I appreciate that.

Thank you, Mr. Chairman.

MS. MAJORAS. Thank you.

MR. STEARNS. I thank the gentleman.

Ms. Baldwin.

MS. BALDWIN. Thank you, Mr. Chairman.

Madame Chairwoman, in my opening statement, I referenced that my interest in this legislation stems from a company in my district that became unable to perform some of its functions due to an encrypted system that had been installed in the equipment that they tried to maintain by the manufacturer. And I know that it is not in the same industry that we are talking about. But granted you are not really excited about the legislation before the subcommittee today, but I would like you to elaborate on your answer to Mr. Dingell's question about what tools do exist right now within the FTC. Do you have jurisdiction to ensure that large manufacturing companies, whether automakers or, as the example I supplied earlier, the energy supply companies, or some other industry, won't strive to take over the services performed by smaller, sometimes independent "mom-and-pop" shops, if you will, steering consumers toward manufacturer-approved or manufacturer-related repair operations? And more importantly, what tools exist for you to protect consumer choice?

And if you would, just maybe walk us through how you would tackle one of these in the absence of legislation, like the bill before the subcommittee today.

MS. MAJORAS. Okay. Well, what we would do is look to the anti-trust laws, because that is what is encompassed in our work under Section 5 in competition. And we would look at the entire picture for consumers with respect to competition, and generally, the first thing that we look at is does the manufacturer who is being accused of doing this have market power. And we would look at that throughout the whole marketplace. So for instance, the tendency is to look simply in the aftermarket, but in fact, we have to look at what the manufacturer is doing all of the way through the chain and whether they have market power. So for example, a manufacturer may not have market power in this space, because in fact, if they are so determined to drive out 70 percent of the repair shops in this country, that they stop letting them have access to this information, and let us just say car company A, because I don't want to use a real live example, then people are going to

talk about that. And we have consumers who are really powerful who are going to know about that, and we are going to tell our friends and family, and people are not going to want to buy a car from car company A, because they want to get their car fixed at the shop where they want to fix it. so we would look at whether the manufacturer, for example, has so much power that, in fact, they can dictate this completely without losing a sufficient amount of business so that they could therefore drive out all of the independents and only work with the dealers.

Now I will say one other thing, and I know you have limited time, it is just complicated.

The one thing to remember about the anti-trust laws today, and the Supreme Court just affirmed this in 2004, is that typically, under the anti-trust laws, we start with the presumption that companies have the right to deal with whom they wish. In this situation, though, it would seem that manufacturers have an economic interest in dealing with these shops because otherwise consumers are going to become quite angry and stop buying particular buys where they can't get their car fixed.

MS. BALDWIN. How long would a comprehensive examination like that take from point of contact for the FTC in complaint?

MS. MAJORAS. Well, you are talking about a law enforcement investigation now and not a Congressional inquiry?

MS. BALDWIN. The investigation you just described.

MS. MAJORAS. Okay. Anti-trust investigations take a while. We have to call an economist, I admit, and so it could take, certainly, a year and maybe more.

MS. BALDWIN. Okay. Now looking at the legislation before us, if it were to pass into law, it requires that within a year of enactment of the bill, the FTC-prescribe regulations for disclosing information. However, it does not specify what terms the service providers and manufacturers should operate under during the transition time, the period of time between the passage of the bill and the FTC regulations. What do you see sort of happening during that transition time? And do you think that in that intervening time, NASTF should be used to settle complaints about access to repair information? Or what would you see the transition time looking like?

MS. MAJORAS. I think probably using that organization, which is now trying to improve itself to be better able to handle these complaints, would probably be our best bet. And I would have to check with our General Accounting Office. It might be possible for us to issue a preliminary regulation that says this is what we are going to do in the interim until we actually can get the regulation into place.

MR. STEARNS. I thank the gentlelady.

The gentlelady from Tennessee, Mrs. Blackburn.

MRS. BLACKBURN. Thank you, Madame Chairman. We appreciate your time on this.

I want to be certain that I heard you correctly in answer to Mr. Dingell's question that you have had no complaints on this issue this year.

MS. MAJORAS. Correct.

MRS. BLACKBURN. Okay. And then in the findings section of the legislation that we are discussing today, H.R. 2048, there is point seven. And I want to see if you agree or disagree with this: "Automobile manufacturers have restricted access to the information motor vehicle owners need in order to diagnose, service, and repair their vehicles in a manner that has hindered open competition among repair facilities." Do you agree or disagree with that statement?

MS. MAJORAS. I don't have the information in front of me. I am not aware that this is the case.

MRS. BLACKBURN. So you are not aware? You have no findings at the FTC that would indicate that to be a true statement? Would you agree with that?

MS. MAJORAS. That is correct.

MRS. BLACKBURN. Okay. Also, I want to be sure that I am understanding and making my notes correctly, that the two main issues causing the groups not to agree on a private system of handling this, which, as you have said, a self-regulatory system is preferred, the two main disagreements are government and then the requirement of the information from the manufacturers, the tools that they would need?

MS. MAJORAS. Yes, and penalties for non-compliance. That would be the third I would put in that category.

MRS. BLACKBURN. Okay. So you would actually make it three? Thank you.

And have either the FTC or the GAO done a study on this issue?

MS. MAJORAS. We have not.

MRS. BLACKBURN. You have not? Okay. Do you know if anyone other than a couple of the groups pushing the legislation, has anyone else done a study to identify problems? Are you aware of anyone else?

MS. MAJORAS. No, I am not aware.

MRS. BLACKBURN. I was not, either. I thought maybe that you could provide some insight there.

Do you think that a GAO study would be necessary on this issue or a study from you all would be necessary?

MS. MAJORAS. Well, I think it certainly could be helpful. There obviously have been a number of questions raised in the subcommittee about the extent of the problem, and I am afraid I can't today provide you that information, and I--

MRS. BLACKBURN. Okay. Well, that is fine. And I understand that is difficult for you to do, because you haven't had complaints. So we are trying to solve a problem that some people would say doesn't exist.

MS. MAJORAS. Certainly some people have said that, yes.

MRS. BLACKBURN. Okay. All right. And outside of passing legislation, would you see any other actions that Congress should take on the issue that would force action on the issue?

MS. MAJORAS. Well, if there is a way we could find, frankly, to beat some heads together, again, and get the stakeholders in this back together, I still think, in the long run, we will all benefit from that.

MRS. BLACKBURN. Okay. And thank you so much for your time.

Mr. Chairman, I yield back.

MR. STEARNS. I thank the gentlelady.

Mr. Strickland.

MR. STRICKLAND. Mr. Chairman--

MR. STEARNS. I am sorry. I beg your pardon. Mr. Gonzalez. I am sorry. Mr. Gonzalez, I beg your pardon.

MR. GONZALEZ. Ted, I am late for a meeting, otherwise, I would let you go.

But real quick, Madame Chair, let me ask you. In your opinion, from your vantage point, is there a problem that would require federal legislation?

MS. MAJORAS. I can't tell yet. What I have seen is anecdotal evidence. I am very sympathetic to those who had a problem based on that anecdotal evidence. When we have asked to at least drill down on the anecdotes so we could, you know, get both sides of the story and try to figure it out, we have not received that information. So I am just handicapped by not having very much information.

MR. GONZALEZ. If we had a problem that reached to the appreciable degree or extent, wouldn't you expect that it be your agency that would be the focal point receiving those complaints? Or where else would people go? Who else has jurisdiction? Who else would be looking into the complaints?

MS. MAJORAS. I am not aware of any other agency that would take such a complaint. We receive complaints of all types, as you know. Probably it would be us, but in fairness, there are times when consumers just don't know who to call.

MR. GONZALEZ. Right. Well, maybe Charlie Gonzalez owning his car, or not a Member of Congress, of course, but surely the repair shop where I am going or their association or organization would be sophisticated enough to know that this might be something your agency would be the appropriate agency to contact?

MS. MAJORAS. Certainly these organizations--

MR. GONZALEZ. I mean, there is no one in this audience that doesn't know that and that would be testifying today. But by your own testimony, there doesn't appear to be evidence that it has reached that point. So where we find ourselves today is, for whatever reason, because it is a very popular argument, and I would agree with it. I buy a car from a manufacturer, it is out of warranty or whatever it is, there is some reason I don't want to go to that dealer. I believe that I am entitled to the information that would allow me to get it repaired, whether I want to do the repairs myself or I want to take it to a local operation there in my neighborhood. And so I think we have had this discussion before, and I think I have had manufacturers and others say, "Yes, we probably do owe that to our customer, our consumer, the individual that bought the car." So is it just a matter that we go ahead and provide a power of attorney to those that repair our cars? It is all kind of crazy, but this is what has happened. There has been a problem out there. It is a very popular one that appeals to many. It is understandable on the most basic level, at the consumer level, and so we responded, and we said, "Okay. All stakeholders, get together and come up with a solution to this problem, which we are not really sure to the extent or the degree that it exists." When there wasn't any movement, then all of a sudden, it appears that we will assume that responsibility. But we are assuming a responsibility for a problem that may not even exist, to the extent that it really requires federal legislation. And I am being told by the chair of the agency or the department in government that should be the recipient of all of these complaints that you are not receiving any. And it is really difficult for me to justify going forward with this piece of legislation at this point in time.

But I do appreciate your testimony and the job that you are doing, and I understand what you are saying is, "If you are going to do this to us, at least give us the resources." And you surely deserve that.

Thank you very much.

I yield back.

MS. MAJORAS. Thank you, sir.

MR. STEARNS. There is no one on this side.

Mr. Strickland.

MR. STRICKLAND. Mr. Chairman, I was not here for opening statements, and I would request permission to--

MR. STEARNS. With unanimous consent, so ordered.

MR. STRICKLAND. And I have no questions for the witness.

MR. STEARNS. Okay.

MR. STRICKLAND. Thank you.

MR. STEARNS. The questions are over, and so we will go to the second panel.

We want to thank the chairwoman for her indulgence and patience, and we appreciate her coming every time she does.

And thank you.

And we will bring up the second panel.

MS. MAJORAS. Thank you, Mr. Chairman--

MR. STEARNS. Sure.

MS. MAJORAS. --Madame Ranking Member.

MR. STEARNS. My colleagues, Ms. Nancie G. Marzulla, Partner, Marzulla & Marzulla on behalf of the Coalition for Auto Repair Equality is here. Second, is Mr. Michael Stanton, Vice President, Government and International Affairs, the Alliance of Automobile Manufacturers. We have Mr. Aaron Lowe, Vice President Government Affairs, Automotive Aftermarket Industry Association, and Mr. Charles G. Gorman, Chairman of the National Automotive Service Task Force. We welcome all four of you.

And Ms. Marzulla, we will start with you with your opening statement. If you don't mind, just put on the microphone and move it close to you so that we can hear you.

STATEMENTS OF NANCIE G. MARZULLA, PARTNER, MARZULLA & MARZULLA, ON BEHALF OF THE COALITION FOR AUTO REPAIR EQUALITY; MICHAEL J. STANTON, VICE PRESIDENT, GOVERNMENT AND INTERNATIONAL AFFAIRS, THE ALLIANCE OF AUTOMOBILE MANUFACTURERS; AARON LOWE, VICE PRESIDENT, GOVERNMENT AFFAIRS, AUTOMOTIVE AFTERMARKET INDUSTRY ASSOCIATION; AND CHARLES G. GORMAN, CHAIRMAN, NATIONAL AUTOMOTIVE TASK FORCE

MS. MARZULLA. Thank you, Mr. Chairman. I am delighted to be here. And I thank you, as well, members of the subcommittee.

As I said, I am delighted to be here today to testify in support of H.R. 2048. I have been actively involved in the legal research and analysis of the motor vehicle owners' right to repair since this bill's inception. As a partner of the Washington, DC law firm of Marzulla & Marzulla, I serve as outside counsel of the Coalition for Auto Repair Equality. I also serve as a part-time Director of Defenders of Property Rights, a national non-profit organization devoted to protecting property rights. Having devoted many years of my professional life to advocating for greater protections for all forms of property, I actually had to step back and independently research and satisfy myself that intellectual property rights

would not be infringed by CARE's approach to this issue before I agreed to come on board.

Having done so, however, I am here today to express my wholehearted and enthusiastic support for the Right to Repair Act. This act, I can confirm, is anchored on bedrock law. The right-to-repair doctrine is based on concepts of fairness and common sense. It says that if you buy a product, you have the legal right to make any and all repairs to that item throughout the product's useful life.

The right-to-repair doctrine is not a new principle. It was established over 150 years ago by the United States Supreme Court in a seminal case, Wilson v. Simpson. In that case, the Supreme Court held that a consumer who purchases a new product or good has a right to repair or replace parts or components when they become broken or worn out. The right-to-repair doctrine has been consistently applied to automobiles. In Electric Auto Lite Company, the court found no patent infringement when the defendant was merely providing replacement parts for a patented ignition system in a motor vehicle. In Dana Corp., the federal circuit court of appeals held that rebuilding clutches on heavy-duty trucks was "permissible repair". In Aero Manufacturing Company, the Supreme Court held that the doctrine permitted replacement of worn-out fabric for the patented folding top of a convertible.

And of course, the right-to-repair doctrine doesn't just apply to cars. The doctrine applies to all kinds of manufacturing products we encounter in our daily lives, such as refrigerators, dishwashers, washing machines, computers, or air-conditioning units. Thus, you may buy your computer from Dell but you can call Computer Geeks or Geeks on Call if something inside your computer breaks or if you want to take the back of the computer off and install more memory. Dell doesn't have the legal right to tell you that you have to send the computer back to Dell just to make a repair or upgrade the computer.

In April, the United States Court of Appeals for the federal circuit, relying on the Supreme Court's Decision in Aero Manufacturing underscored the continuing vitality of the right-to-repair doctrine, stating that the purchaser's long-established right to use and repair an article that has been legally purchased from the patentee.

Although the right-to-repair doctrine is well-established at common law, the use of computers in the modern vehicle is increasingly interfering with the vehicle owner's ability to exercise his right or her right to even diagnose much less service or repair a vehicle. Without the information necessary to access the computer in the vehicle, the owner can't even accurately diagnose what is wrong with the car, much less make simple repairs. Without the ability to talk to the computer in the vehicle, cheaper, more readily available replacement parts can not be

installed in the vehicle, because the computer may be programmed to reject them. Even the replacement parts may be of superior quality.

In closing, let me stress that nothing in H.R. 2048 will authorize anyone to reproduce or distribute any patented product or creative work, and all remedies for violations of patents, copyrights, trade secrets, and trademarks remain in force under the bill.

In short, H.R. 2048 will do nothing more than simply allow car owners to continue doing what they have always done: change their tires, replace worn-out engine parts, install new batteries, upgrade stereo systems, replace burned-out taillights, and fix broken ignition systems.

I would be happy to answer any questions that you may have.

Thank you.

[The prepared statement of Nancie G. Marzulla follows:]

PREPARED STATEMENT OF NANCIE G. MARZULLA, PARTNER, MARZULLA & MARZULLA, ON BEHALF OF THE COALITION FOR AUTO REPAIR EQUALITY

Thank you Mr. Chairman and Members of the Subcommittee. I am pleased to be here today to testify in support of H.R. 2048, the Motor Vehicle Owner's Right to Repair Act on behalf of the Coalition for Auto Repair Equality (CARE). CARE is a non-profit organization representing companies in the $200 billion-a-year, five million employee aftermarket industry. CARE's members operate businesses at 34,820 locations throughout the United States. Of these, 15,270 are automobile repair facilities. CARE's members also include companies that sell replacement parts to "do-it-yourselfers" or independent repair facilities.

Second only to a home, the automobile is the most expensive thing a consumer buys. A motor vehicle is quintessentially a consumer product that must be regularly maintained and repaired in order to operate safely and properly. For example, brakes wear out and must be replaced. Likewise, transmissions become worn and need repair. Finally, even engine parts wear out and must be continually serviced and repaired. In short, virtually any component of an automobile will wear out and need replacement or service over the useful life of a vehicle.

The American automobile owner has long enjoyed the right to choose by whom, where, and when to have his or her vehicle diagnosed, serviced, and repaired without this choice being dictated by the automobile's manufacturer. This right to repair is something the vehicle owner buys at the time he or she purchases the automobile, and this freedom of choice is the American way of car ownership. The car belongs to the owner, and he or she may repair, service, improve or change accessories as desired. Such choice allows the vehicle owner to develop relationships with local or small independent repair shops. Likewise, the owner can shop around, and search for and compare prices or hours of operation. The owner can also choose the brand and quality of fluids, filters, batteries, tires and other replacement parts he or she wishes to install and, if he or she is talented enough, can install them. If the automobile manufacturers have their way, however, this proud American tradition of auto ownership ability to choose who and where an automobile will be repaired will be as commonplace as a horse and buggy.

This is because automobile manufacturers are increasingly using technology to successfully "lock out" automobile owners from maintaining and repairing their vehicles. Thus, even such seemingly simple matters as determining what a light on a dashboard means requires a trip to the dealership. Modern automobiles contain computers that control many components such as the braking system, the steering mechanism, air bags,

ignition, and the climate control system. Lacking the ability to talk to the vehicle's computers, the owners or their auto technicians cannot begin to diagnose, service, or repair modern vehicles. Thus, increasingly, manufacturers are forcing vehicle owners to go to only one place for their service and repairs, to automobile dealers. This scheme, to destroy the competition for automobile service and repair, is anticompetitive. Moreover, forcing the vehicle owner to go back to the dealer for diagnosis, service, and repairs of the vehicle defies the settled and reasonable expectations of the American automobile consumer to choose who and where to have his or her vehicle repaired.

Although it is impossible to know the exact extent of the current problem, we estimate that independent repair technicians are turning away approximately 15 percent of all vehicles because manufactures have not released the information, information that they do release to their representatives. Because we are just now working with vehicles coming off their five-year warranty, the first generation of computer-controlled cars, we are seeing just the tip of the problem and we believe this number to be increasing each year as the auto fleet matures. This would be consistent with Automotive Service Association's testimony before the U.S. Senate in 2002 that 15 percent of all incidents of service are rejected due to lack of repair, which amounts to 161 million incidents of nonrepair, costing the industry 18 billion dollars.

A survey conducted by the Tarrance Group several years ago provides empirical evidence that 2 million Americans are annually forced to take their automobiles to manufacturers' representatives rather than independent repair shops. A poll of 800 owners or managers of automotive aftermarket businesses found that 59 percent have problems getting the necessary information to repair or provide parts for automobiles. That poll also found that 44 percent of aftermarket shops send one to six vehicles per month to a manufacturer representative for repair because of lack of information or tools, while another nine percent send over six vehicles per month. With approximately 178,000 independent repair shops in this country, that means approximately 2 million vehicles per year are diverted from independents to manufacturers' authorized representatives, a substantial disruption of the free market and a denial of the right of 2 million Americans to choose who will repair and service their automobile each year.

Increasingly, thus, the independent repair shop can no longer access the sophisticated on-board computers at all, and the automobile owner often has no choice but the manufacturer representative to service and repair the vehicle. This legislation will halt the demise of the independent repair shop, and preserve the vehicle owner's right to choose who will repair the vehicle.

I. The Consumer's Right to Repair

The right of the consumer to repair a piece of equipment that he or she purchased is bedrock law. In the landmark case, *Wilson v. Simpson*, 50 U.S. 109 (1850), the United States Supreme Court established the right to repair doctrine, holding that a consumer who purchases a new product or good has the right to repair or replace parts in that product or piece of machinery when they had become broken or worn-out.

Wilson involved a claim of patent infringement. In this historic case, an owner of a planning machine was sued for patent infringement because the owner had replaced worn-out cutter knives that were part of the machine. The Supreme Court held that the owner had a right to repair or replace parts of the machine, even if the machine, as a whole, was subject to a patent:

> It is the use of the whole of that which a purchaser buys, when the patentee sells to him a machine; and, when he repairs the damages which may be done to it, it is no more than the exercise of that right of care which every one may use to give duration to that which he owns, or has a right to use as a whole. . . . The right to repair and replace in such a case is either in the patentee, or in him who has bought the machine. Has the patentee a more equitable right to force the disuse of the

> machine entirely, on account of the inoperativeness of a part of it, than the purchaser has a right to repair, who has, in the whole of it, a right to use?

Id. at 123. The Court emphasized the fact that the planning machine was designed to last for several years, while cutter-knives, which are a part of the planning machine, were designed to last only sixty to ninety days. Thus:

> The right of the assignee to replace the cutter-knives is not because they are perishable materials, but because the inventor of the machine has so arranged them as a part of its combination, that the machine could not be continued in use without a succession of knives at short intervals. Unless they were replaced, the invention would have been but of little use to the inventor or to others.

Id. at 125.

Justice Oliver Wendall Holmes subsequently applied this doctrine in *Heyer v. Duplicator Manufacturing Company*, 263 U.S. 100, 101 (1923). In *Heyer*, the Supreme Court reviewed another patent infringement case involving the patent for "improvements in multiple copying machines." One part of that machine was a band of gelatine attached to a spool or spindle that fit into the machine and allowed a print to be multiplied up to about a hundred times. The Court upheld the right of the consumer to replace the bands explaining that "[t]he owner when he bought one of these machines had a right to suppose that he was free to maintain [its] use, without the further consent of the seller, for more than the sixty days in which the present gelatine might be used up. The machine lasts indefinitely, the bands are exhausted after a limited use and manifestly must be replaced." *Id*. at 101-02; *see also Schayer v. R.K.O. Radio Pictures*, 56 F. Supp. 903 (S.D.N.Y. 1944) (holding repair and maintenance of machine did not constitute patent infringement); *Westinghouse Electric & Mfg. Co*., 131 F.2d 406 (6th Cir. 1942) (holding that replacing parts of an "automatic progressive-feed stoker" did not constitute patent infringement); *F.F. Slocomb & Co. v. A.C. Layman Mach. Co*., 227 F. 94 (D. Del. 1915) (holding that both owner of machine and third party effecting repair of machine have right to replace parts of the machine); and, *Thomson-Houston Electric Co. v. Kelsey Electric Railway Sepcialty Co*., 75 F. 1005 (2d Cir. 1896)(upholding the right to replace trolley stands as not violative of patent holder's rights).

In 1935, the U.S. Court of Appeals for the Second Circuit again applied the "right of repair" to two separate suits involving the repair and use of replacement parts of a motor vehicle. In *Electric Auto Lite Company v. P. & D. Manufacturing Company*, 78 F.2d 700, 703-4 (2d. Cir. 1935), the court reviewed a lower court decision that found no patent infringement where the defendant was merely providing replacement parts for a patented ignition system in a motor vehicle. The Second Circuit upheld the lower court's decision and in so doing, left no doubt that a car owner has the right to repair his or her car by replacing broken or worn-out parts:

> A purchaser of a car having an ignition system made pursuant to any of these patents was entitled to have it repaired when necessary or replaced as to any of the parts in issue, in order to enjoy the continued usefulness of this ignition system. The car owner could repair or replace the part and would not be guilty of infringement if he did so. In like manner, he had the right to obtain the necessary part when his own need therefor arose. Indeed, the ignition apparatus is so designed and built as to make it possible to quickly and simply detach, for replacement purposes, the parts referred to and thus to meet the demands of wear or destruction.

Id. at 703.

In the second case, *General Motors Corporation v. Preferred Electric & Wire Corporation*, 79 F.2d 621 (2d Cir. 1935), the Second Circuit Court of Appeals again upheld a vehicle owner's right to replace the parts of an ignition system in his or her motor vehicle. The court stated that the right to repair or replace such parts is:

> an incident of the rightful use of the purchased car. After purchase, the car owner has an apparatus wholly free from the limits of a monopoly. That it is no

> infringement to make ordinary repairs or replacements that may reasonably be expected as necessary during the life of the car as a whole has been established by authorities.

Id. at 623 (citations omitted). The court further noted that such vehicle parts are "intentionally made so that they might be quickly detached and replaced when worn. They were relatively perishable and wore out before the device as a whole was worn and, moreover, it was the custom of the trade to effect repairs by replacement of the defective parts." *Id*.

More recently, in *Aro Manufacturing Company v. Convertible Top Replacement Company*, 365 U.S. 336 (1961), the Supreme Court applied the right to repair doctrine in a patent infringement suit regarding a certain patented folding top for a convertible motor vehicle. The defendant manufactured and sold replacement fabrics to be put into the patented combination. The Court concluded that the replacement of the fabric was a "permissible repair." *Id*; *see also Hewlett Packard Co. v. Repeat-O-Type Stencil Mfg. Co*., 123 F.3d 1445 (Fed. Cir. 1997), *rehearing denied, suggestion for in banc declined* (Oct. 14, 1997)(quoting *Mitchell v. Hawley*, 83 U.S. (16 Wall.) 544, 547 (1872) ("[T]he rule is well established that the patentee must be understood to have parted to that extent with all his exclusive rights and that he ceases to have any interest whatever in the patented machine so sold and delivered."); *R2 Medical Systems, Inc. v. Katecho, Inc*., 931 F. Supp. 1397, 1442 (N.D. Ill. 1996) ("Once a patent owner sells a patented article, the purchaser also acquires an implied right to use and maintain that article continually. . . . The right to repair extends to the replacement of perishable components whose useful life is regularly exhausted by the proper use of the article."); *Sage Products, Inc. v. Devon Indus., Inc.* 45 F.3d 1575 (Fed. Cir. 1995) (holding doctrine of repair is not limited to temporary or minor repairs; it encompasses any repair that is necessary for maintenance of use or use of the whole of patented combination through replacement of spent, unpatented element.); *FMC Corp. v. Up-Right, Inc*., 21 F.3d 1073, 1077 (Fed. Cir. 1994)("[M]ere replacement of broken or worn-out parts, one at a time, whether of the same part repeatedly or of a different part successively, is not more than the lawful right of the owner to repair his property.").

Although the right-to-repair doctrine is well established at common law, the use of computers in the modern vehicle truncates the vehicle owner's ability to exercise his or her right to actually repair the vehicle. Without the information necessary to access the computer in the vehicle, the owner cannot accurately diagnosis repair symptoms. Without the ability to access the computer in the vehicle, cheaper and more readily available replacement parts cannot be installed in a vehicle because the computer may be programmed to reject them, even though they are of superior quality. This bill updates the right to repair, bringing it into the computer age.

Nothing in H.R. 2048 authorizes anyone to reproduce or distribute any patented product or creative work, and all remedies for violations of patents and copyrights remain in force under the bill. The Copyright and Patent Clause of the United States Constitution provides as to copyrights: "Congress shall have Power … [t]o promote the Progress of Science … by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. Const., Art. I, §8, cl. 8.

When granting a patent, the government allows a temporary monopoly, but the limits of that monopoly require public disclosure of the patent to take into consideration the public's interests in that invention. 69 C.J.S. Patents § 139. "The specification [for the patent] shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention." 35 U.S.C.A. § 112.

In *Eastman Kodak v. Image Technical Services*, 504 U.S. 451 (1992), where the Kodak company in 1985 had "implemented a policy of selling replacement parts for micrographic and copying machines only to buyers of Kodak equipment who use Kodak service or repair their own machines," the Supreme Court found that the trial court could make a finding that there was a violation of Section 1 of the Sherman Act by Kodak making such a "tying" arrangement. *Id*. at 458, 479. The actions by the auto manufacturers to keep independent service providers from obtaining the information necessary to repair automobiles are similar to the illegal "tying" actions of Kodak. Because the auto manufacturers are "tying" their market power from the auto and auto parts manufacturing market to their commerce in the repair markets, they are violating Sherman Antitrust Act, 15 U.S.C.A. § 1.

In *In re Independent Service Organizations Antitrust Litigation* ("Xerox"), 203 F.3d 1322 (Fed. Cir. 2000), the U.S. Court of Appeals for the Federal Circuit held that Xerox could refuse to sell its patented replacement parts to independent service repair organizations. The Federal Circuit acknowledged that intellectual property rights do not confer a privilege to violate antitrust laws, but went on to state that as a general rule, the antitrust laws do not prevent the owner of intellectual property rights from excluding others from use of its patented property. The court found that unless the antitrust defendant engages in illegal tying, Patent and Trademark Office fraud, or sham litigation, it could enforce its statutory intellectual property rights without violating the antitrust laws. *Xerox,* 203 F.3d at 1327.

"Notably, *Kodak* was a tying case when it came before the Supreme Court, and no patents had been asserted in defense of the antitrust claims against Kodak. Conversely, there are no claims in this case of illegally tying the sale of Xerox's patented parts to unpatented products." *Xerox*, 203 F.3d at 1327. Because our case with the auto manufacturers has related antitrust issues, the ruling in *Xerox* would not directly apply to our case with the auto manufacturers.

II. Role of the FTC in Protecting the Automobile Owners' Right to Repair

H.R. 2048 authorizes the Federal Trade Commission (FTC), which is the nation's lead consumer protection agency, to promulgate regulations ensuring that new motor vehicle owners have all the information necessary at their disposal for diagnosing, servicing, repairing and choosing the replacement parts for their vehicles. The Federal Trade Commission has in place broad statutory authority to enforce a variety of federal antitrust and consumer protection laws. The two separate missions of the FTC are part of the FTC's original mandate from Congress, the Federal Trade Commission Act of 1914, which granted the Commission the power to determine and prevent "unfair deceptive acts or practices in commerce" (consumer protection mission) and "unfair methods of competition (antitrust mission)." *See* 15 U.S.C.A. § 45(a)(1) (West 1999).

In 1938, the Wheeler-Lee Amendment broadened the FTC's jurisdiction and stated, in relevant part, that "[t]he Commission is empowered and directed to prevent persons, partnerships, or corporations . . . from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce." Wheeler-Lee Amendment, ch. 49, § 3, 52 Stat. 111 (1938).

The Magnuson-Moss Act of 1974 further expanded the FTC's power to promulgate substantive rules regarding consumer protection. As a result of the Magnuson-Moss Act, section 18 was added to the FTC Act authorizing the Commission to prescribe:

(A) interpretive rules and general statements of policy with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), and

(B) rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of

> section 45(a)(1) of this title). . . . Rules under this subparagraph may include requirements prescribed for the purpose of preventing such acts or practices.

See 15 U.S.C.A. § 57a (West 1999). This Act also altered the language of section 5(a)(1) of the FTC Act which now reads: "[t]he Commission is hereby empowered and directed to prevent persons, partnerships, or corporations . . . from using unfair methods of competition in *or affecting* commerce and unfair or deceptive acts or practices in *or affecting* commerce." *See* 15 U.S.C.A. § 45(a)(1) (West 1999) (emphasis added to indicate amended language).

In addition to its original mandate to protect consumers against unfair or deceptive acts or practices under the FTC Act and its amendments, the FTC has also been given authority under several consumer protection statutes to prohibit specifically-defined trade practices and, as the present bill does, require disclosure of certain information to consumers. For example, under the Wool Products Labeling Act, 15 U.S.C. §§ 68-68j, the Fur Products Labeling Act, 15 U.S.C. §§ 69-69j, the Textile Fiber Products Identification Act, 15 U.S.C. §§ 70-70k, the Federal Cigarette Labeling and Advertising Act of 1966, 15 U.S.C. §§ 1331-1340, and the Fair Packaging and Labeling Act, 15 U.S.C. §§ 1451-1461, the FTC has been given the authority to mandate content disclosure in the labeling, invoicing and advertising of certain products. Similarly, under the Truth in Lending Act, 15 U.S.C. §§ 1601-1667f, the FTC has been granted the authority to require all creditors who deal with consumers to make certain written disclosures concerning finance charges and other aspects of financial transactions, and under the Fair Credit and Charge Card Disclosure Act, 15 U.S.C. 1637(c)-(g), the FTC can require credit and charge card issuers to provide certain disclosures in applications and solicitations.

The FTC has been given specific authority under the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667(f), to require that certain automobile lease costs and terms be disclosed. Also, under the Energy Policy Act of 1992, 42 U.S.C. §§ 6201, the FTC is authorized to issue requirements for the labeling of certain fuels and to issue other energy-efficient rules regarding lamps, transformers and small electric motors.

The purposes of the present bill are to protect American consumers from the unfair and deceptive practice of vehicle manufacturers in refusing to disclose certain information necessary for the repair, service and diagnosis of their motor vehicles and to ensure that American consumers have the opportunity to choose their own vehicle repair technician. The goals of this bill directly parallel the two missions of the FTC to protect consumers and encourage competition in commerce. Furthermore, as shown above, the FTC has been given a broad grant of authority, under the FTC Act, to accomplish its missions and promulgate corresponding rules and regulations. Similar to the above-mentioned statutes which authorize the FTC to prohibit certain trade practices, the present bill would authorize the FTC to prohibit the unfair practice of "locking out" consumers from their own vehicles by requiring disclosure of information necessary to ensure that their vehicles are maintained and repaired accurately and safely. Although it will certainly impose some new duties on the FTC, we believe that these duties are neither foreign to the Commission nor beyond its competence.

III. Self-Regulation Has Failed to Protect the Consumer and to Preserve Competition in the Auto Repair and After-Parts Industry.

In order for a voluntary agreement to be effective, there must be effective enforcement and oversight of the agreement.

The close vertical marketing arrangement between automobile manufacturers and their authorized representatives makes it easy to build in the repair business as part of the price the consumer ultimately has to pay for the vehicle, and the profit which the manufacturer representative makes on the sale. This, in turn, increases the price the authorized representative can afford to pay the manufacturer. To the extent the

manufacturer can also guarantee after-market warranty repair work to its representative by locking out independent repair shops and after-market parts producers, both the manufacturer and their representatives profit at the expense of the consumer. There is simply no economic incentive to allow independent repair shops to compete with manufacturer representatives for the same work, or to allow after-market parts to compete with the auto manufacturers' "genuine factory parts" sold at premium prices. The legitimate role of government is to intervene in the case of such market failures.

IV. A Model for This Information Disclosure Program Already Exists Under EPA's Mobile Source Rules

The successful EPA program requiring precisely the same kind of disclosures under the mobile source provisions of the Clean Air Act leaves little doubt that legislative proposal will work. Indeed, H.R. 2048 is directly modeled on the Clean Air Act Amendments, which insures the availability of the information necessary to repair the car's emissions or pollution control system. H.R. 2048 simply takes the non-discrimination provisions already applied to the car's emissions system, and applies them to all of the other systems in the motor vehicle.

In the 1990 Clean Air Act Amendments, Congress adopted a provision virtually identical to the present bill. That provision states:

> The Administrator, by regulation, shall require . . . manufacturers to provide promptly to any person engaged in the repairing or servicing of motor vehicles . . . any and all information needed to make use of the emission control diagnostics system . . . and . . . instructions for making emission related diagnosis and repairs. No such information may be withheld under section 7542(c) of this title [relating to trade secrets] if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. . . .

42 U.S.C. § 7521(m)(5). To implement this statute, EPA has issued regulations detailing what information automobile manufacturers must make available and specific procedures for doing so:

> Manufacturers shall furnish or cause to be furnished to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines . . . any and all information needed to make use of the on-board diagnostic system and such other information, including instructions for making emission-related diagnosis and repairs, including, but not limited to, service manuals, technical service bulletins, recall service information, data stream information, bi-directional control information, and training information, unless such information is protected by section 208(c) as a trade secret. No such information may be withheld under section 208(c) of the Act if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines.

40 C.F.R. § 86.094-38(g)(1); *see also* 40 C.F.R. § 86.1808-01(f)(2)(i).

In addition, automobile manufacturers must provide this information "at a fair and reasonable price" to be determined by EPA. 40 C.F.R. § 86.094-38(g)(3); 40 C.F.R. § 86.1808-01(f)(7)(i). Any manufacturer that does not provide the required information at this price is deemed to have made the information unavailable. 40 C.F.R. § 86.094-38(g)(4); 40 C.F.R. § 86.1808-01(f)(8).

Each manufacturer must provide an index to its required information or provide the information on its website (40 C.F.R. § 86.094-38(g)(5); 40 C.F.R. § 86.094-1808-01(f)(3), (10)(2)), update the index or website (40 C.F.R. § 86.094-38(g)(5)(i); 40 C.F.R. § 86.094-1808-01(f)(3), (10)(2)), and maintain the index or website (40 C.F.R. § 86.094-38(g)(7); 40 C.F.R. § 86.094-1808-01(f)(7)(i), (10)(2)).

Manufacturers must provide the information at the same time they give it to their authorized representatives (40 C.F.R. § 86.094-38(g)(6)), and must mail certain requested information within one business day of receiving an order. 40 C.F.R. § 86.094-38(g)(9); 40 C.F.R. § 86.1808-01(f)(10)(2).

Like the FTC, EPA is not an information-gathering agency, but primarily a regulatory agency with expansive civil and criminal enforcement authority. Yet EPA has found no difficulty in administering this program and, as a consequence, consumers have had no problem getting their pollution control systems repaired.

H.R. 2048 would simply expand the consumer's right to repair to encompass all of the automobile's systems. We would expect that, when mandated by law, automobile manufacturers will comply with the disclosure requirements (as they have under the Clean Air Act), minimizing any need for FTC involvement in enforcing these provisions.

I would be happy to answer any questions that you may have.

Respectfully submitted,

Nancie G. Marzulla

MR. STEARNS. And I thank you.

Mr. Stanton.

MR. STANTON. Thank you, Mr. Chairman.

Almost 500 vehicle service events are undertaken per year, and while automakers attempt to ensure that all information is available, we recognize that with millions of pages of service and repair information, there will be instances where that information may not be readily available or apparent. Automakers try to correct these gaps as quickly as possible. There are situations, however, where access to some information is neither reasonable nor appropriate, such as information to override immobilizers that are part of vehicle security systems or override vehicle safety or emissions operating software.

In 2000, the National Automobile Service Task Force was created to facilitate the identification and correction of gaps in the availability and accessibility of automotive service information, service training, diagnostic tools and equipment. The NASTF inquiry process, which has been highly publicized for several years in major trade publications, like Motor and Motor Age Magazine, has received only 57 requests for help in obtaining information for all of 2005. In other words, on average, aftermarket repair technicians requested access to repair information from NASTF just once in every five million vehicle repairs.

Turning to the text of H.R. 2048, we continue to have concerns about the need for this legislation. We also have substantial concerns about the language of the legislation and several points regarding its apparent intent.

First, the finding sections of the bill conclude that automakers have systematically engaged in "a manner that has hindered open competition". This simply is not true. Since anti-competitive behavior is

illegal under federal and State law, branding all automakers with this unfounded conclusion is both unreasonable and places them at legal risk. Moreover, the findings address an issue that goes beyond the scope of the legislation, mainly whether consumers should always be able to choose between original parts and aftermarket parts for vehicles repairs. The findings, coupled with the disclosure requirements in section 3, create an atmosphere of promoting lawsuits under State consumer protection laws. This will lead to an unnecessary increase in litigation and the release of proprietary information. This threatens the manufacturers' intellectual property and has nothing to do with the availability of service information.

Section 3 of H.R. 2048 requires "the same service and training information related to vehicle repair shall be made available to all independent repair facilities in the same manner and extent as it is made available to franchised dealerships". This would include vehicle security information, the release of key codes, and the release of immobilizer override information. This would compromise the security systems that have cut auto theft in half. The Highway Loss Data Institute and a recent study by JP Research, Inc. confirmed the effectiveness of these systems, which are now in 75 percent of new models. Decreasing the effectiveness of these systems could jeopardize the discount consumers get today on their auto insurance.

And finally, the issues H.R. 2048 attempts to address have never been documented or quantified.

And Mr. Chairman, from our viewpoint, in looking at how do we document this, our coalition, which is made up of all of our members, which is nine manufacturers, plus the Association of International Automobile Manufacturers, we represent all of the vehicles that are being sold in the United States, those manufacturers. Our manufacturers tell us, in fact, that they are making all of this information available. They make the same information available to the aftermarket that they make available to the dealers.

Secondly, another member of our coalition is the Automotive Service Association, which is comprised technicians. And they will testify and tell you that, in fact, all of the information is available.

Third, we look at the NASTF inquiry process. In all of 2005, there were only 57 requests for information.

And then finally, all of our members have their own databases that are open to the public. The cost of them is investigated by the EPA. They are reasonable costs. And yet the requests for information for those are all in double-digits. And we just don't think there is a problem.

Thank you, sir.

[The prepared statement of Michael J. Stanton follows:]

PREPARED STATEMENT OF MICHAEL J. STANTON, VICE PRESIDENT, GOVERNMENT AND INTERNATIONAL AFFAIRS, THE ALLIANCE OF AUTOMOBILE MANUFACTURERS

Thank you for the opportunity to testify before the Subcommittee on Commerce, Trade and Consumer Protection regarding H.R. 2048 the "Motor Vehicle Owners' Right to Repair Act of 2005." I represent the Alliance of Automobile Manufacturers (Alliance), a trade association of nine car and light-truck manufacturers. Our member companies include BMW Group, DaimlerChrysler Corporation, Ford Motor Company, General Motors Corporation, Mazda, Mitsubishi, Porsche, Toyota Motor North America and Volkswagen of America. One out of every ten jobs in the U.S. is dependent on the automotive industry.

Alliance member companies have more than 600,000 employees in the United States, with more than 230 manufacturing facilities in 35 states. Overall, a University of Michigan study found that the entire automobile industry creates more than 6.6 million direct and spin-off jobs in all 50 states and produces almost $243 billion in payroll compensation annually.

Historically, about 75 percent of vehicle service and repairs are performed in non-dealer shops. Automakers view these non-dealer shops as important players in providing service to their mutual customers, the driving public. Just as motor vehicles have become more complex, the servicing of them has also become a high technology business requiring skilled, trained technicians and a sizeable investment in diagnostic and repair equipment. Automakers provide independent repair technicians access to training information, specialized tools, and service and repair information necessary for servicing their customers' vehicles.

Almost 500 million non-warranty service events are undertaken each year. While we make every attempt to ensure every element of information is readily accessible for every one of these aftermarket repair events, we recognize that with literally millions of pages of service and repair information that need to be accessed for these repairs, there will be instances where needed information may not be readily available or apparent. The automakers try to correct these gaps as quickly as possible. There are situations, however, where access to some information is neither reasonable nor appropriate – such as information to override immobilizers that are part of theft deterrent/security systems or overwrite vehicle safety or emissions operating software.

In 2000, the National Automobile Service Task Force (NASTF) was created to facilitate the identification and correction of gaps in the availability and accessibility of automotive service information, service training, diagnostic tools and equipment, and communications for the benefit of automotive service professionals. NASTF is a voluntary, cooperative partnership between automakers, the independent aftermarket repair community, the automotive equipment and tool industry, automotive trainers, locksmiths, suppliers, the insurance industry, law enforcement, auto dealers and others. The NASTF inquiry process, which has been highly publicized for several years in major trade publications like *Motor* and *Motor Age Magazines*, has received only 57 requests for help obtaining information for all of 2005. In other words, aftermarket repair technicians requested access to repair information in .00000019 percent of all repair attempts. That is six zeros to the right of the decimal point! Of the 57 inquiries, most were resolved to the satisfaction of the requestors. The NASTF complaint process is well established at this point, readily accessible on the Internet (at www.nastf.org) and every request for information and its respective solution is transparent on the International Automotive Technicians Network, a well-recognized Internet forum of over 48,000 professional independent and dealership automobile repair technicians.

Working together, the volunteers at NASTF have implemented web based links to every automakers' service information website with contact information. NASTF has succeeded in improving communications between automaker engineering groups and the

Equipment & Tool Institute to ensure that scan tool information is readily available to aftermarket tool manufacturers. NASTF has reached out to the locksmith community and the National Insurance Crime Bureau and established the NASTF Vehicle Security Committee to address the controversial and highly complex issues surrounding methods to provide information to automotive security professionals without compromising vehicle security and customer safety.

Since its inception, automakers and the Automotive Service Association (ASA), the nation's largest association of independent repair shops and technicians have invited all other interested parties to participate in the NASTF voluntary process**.**

Last month, NASTF established a board of directors to oversee the organization and update its mission, vision, and structure. The Board also elected officers at this meeting. The Chairman of the NASTF Board is with the Equipment and Tool Institute. The Vice-Chairman is with the Automotive Service Association and the Secretary/Treasurer is with the Alliance of Automobile Manufacturers. The Board then chose the National Institute for Automotive Service Excellence (ASE) to provide day-to-day management of NASTF. The Alliance believes the formalizing of NASTF is another major step that ensures service information, tools, and training will continue to be available to independent repair facilities. Six organizations (The Motor Equipment Manufacturers Association, The Equipment and Tool Institute, The Associated Locksmiths of America, The Association of International Automobile Manufacturers, The Automotive Service Association, and the Alliance of Automobile Manufacturers) have pledged to fund NASTF for the first year.

H.R. 2048

Turning to the text of H.R. 2048, we continue to have concerns about the need for this legislation. We also have substantial concerns about the language of the legislation and at several points its apparent intent.

The findings of the legislation are unnecessarily harsh and factually inaccurate in many cases. The language is unfair to the automakers that have made significant investments in human and financial resources to provide convenient access to service information and tools to all independent automotive service providers 24 hours a day, 7 days a week. Automakers have already demonstrated their commitment to making service information and tools available and have been doing so for some time. Although a small number of important issues were identified during our negotiations with the Coalition for Auto Repair Equality (CARE) Coalition, we did not hear allegations of any widespread breakdown of the systems established to resolve service information and tool gaps. For this reason, we strongly take issue with the statements in the "findings" section of the bill that concludes that automakers have systematically engaged in "a manner that has hindered open competition." This simply is not true. Since "anticompetitive behavior" is illegal under federal and state law, branding all automakers with this unfounded conclusion is both unreasonable and places them at legal risk.

Moreover, the findings address an issue that goes beyond the scope of the legislation: namely, whether consumers should always be able to choose between original parts and aftermarket parts for vehicle repairs. This issue quickly fell off the table during Better Business Bureau discussions and is not appropriate for the findings portion of this bill.

The legislation is not precise in describing the scope of what is being sought by the proponents of the bill. For example, the language appears to confuse "service information" with information to design diagnostic "tools." It also appears to override the standard and accepted practice of providing some service and training information to the independent service providers by alternative means other than that used to communicate with dealers. The satellite networks and programs used to communicate with dealers cover a wide variety of business support services and are not appropriate for

use by independent repair facilities. However, hard copies of materials or CD-ROMs of the relevant portions of these broadcasts are often used to provide the relevant information on service/repair issues to independent facilities. EPA intentionally carved out this provision from its service information rules because automakers cannot be expected to build special delivery infrastructures for the aftermarket. The CARE Coalition has not otherwise sought access to the satellite-based information delivery system of the manufacturers, and this legislation should not force changes in the current practices.

Section 3 of H.R. 2048 requires "the same service and training information related to vehicle repair shall be made available to all independent repair facilities in the same manner and extent as it is made available to franchised dealerships, and shall include all information needed to activate all controls that can be activated by a franchised dealership." This would include, in the case of most automobile manufacturers, vehicle security information, the release of key codes, and release of immobilizer override information. This would compromise the security systems that have been found to cut auto theft by more than 50 percent and jeopardize consumers' anti-theft insurance discounts. This is in direct conflict with the purposes of the Motor Vehicle Theft Acts of 1984 and 1992 that provided a limited exemption from parts marking for antitheft devices determined by NHTSA to be as effective as parts marking in reducing motor vehicle theft. The effectiveness of these systems, which are now in 75 percent of new models, has been confirmed by the Highway Loss Data Institute and a recent study by JP Research, Inc.

As another example, the text in Section 3 would also require making the "same diagnostic tools ***and capabilities*** related to vehicle repair" available to the independent service provider as are available to franchised dealers. We do not know what is intended by the word "capabilities" in this context. It could mean that manufacturers would have to grant access to their dealer "hot lines," which are used to provide one-on-one diagnostic help to dealers who call for technical assistance. Virtually all of these "hot line" requests are while the vehicle is still under warranty.

In addition Section 3, coupled with the "Findings and Purposes" section create an atmosphere of promoting lawsuits under State "little FTC laws." This will lead to an explosion of litigation and the likely release of proprietary information.

We also strongly object to the language in the bill that says that failure of a manufacturer to comply is automatically "an unfair method of competition and an unfair or deceptive act or practice in or affecting commerce" under the Federal Trade Commission Act. While automakers will always strive to comply with any Federal Trade Commission (FTC) regulation, minor discrepancies should not give rise to an automatic pre-determination that they reflect the very serious charge of being "an unfair method of competition and an unfair or deceptive act or practice." The FTC has ample authority and established legal standards to decide when a regulatory violation constitutes "an unfair method of competition" or "an unfair or deceptive act or practice." In fact, the Center for Auto Safety has petitioned the FTC (March 13, 2006) to "…investigate the practices of auto companies in not releasing programming information for smart keys and charging exorbitant fees for nominal programming costs." To establish a new regulatory requirement would be redundant and unwarranted based on the lack of a documented problem.

Finally, the issues H.R. 2048 attempts to address have never been documented or quantified. In addition, it would:

- Create a new federal bureaucracy to oversee the very small number of complaints raised each year about lack of information availability.
- Establish a process for pursuing state lawsuits based on the "right" to this information and the "duty" for automakers to provide whatever is deemed necessary.

- Jeopardize the intellectual property and proprietary information of automakers regarding parts design and vehicle operating systems. Aftermarket parts manufacturers want to produce competing repair parts and may allow parts that do not meet original equipment specifications, safety or emissions requirements to be used in repairs or vehicle modifications.
- Require the release of information on vehicle security systems and result in increased vehicle thefts.

The Alliance, AIAM, ASA and NADA and others continue to address service information issues as they arise and believe that legislation is not needed to further this process. We strongly support the recent formalization of NASTF, and we will continue to improve the NASTF program that identifies occasional gaps in service information and ensures that these gaps are quickly remedied. H.R. 2048 would create an unneeded federal bureaucracy to replace the existing voluntary process of providing information and resolving disputes. The FTC and the Better Business Bureau have both testified before Congress that the best way to address issues relating to service information is through a voluntary, non-regulatory organization -- not legislation**.** H.R. 2048 may well undermine the unprecedented cooperation between automakers and the aftermarket repair community and quite possibly destroy the voluntary program (NASTF) developed to deal with service information issues.

MR. STEARNS. Mr. Lowe.

MR. LOWE. Thank you. My name is Aaron Lowe, and I am testifying in behalf of the Automotive Aftermarket Industry Association in support of passage of the Motor Vehicle Owners' Right to Repair Act.

We are a Bethesda-based trade association whose more than 8,000 member companies and affiliates manufacture, distribute, sell, and install motor vehicle parts and accessories. Throughout our membership, we represent more than 100,000 repair shops, parts stores, and distribution outlets.

The Right to Repair Act is really very simple. It seeks to ensure that manufacturers share the same information and tools with independent repair facilities that they provide their new car dealers. There are many car companies that have claimed repeatedly that they are making everything available. Passage of this legislation will impose no new requirements since they are already in compliance. For those that have been withholding information and tools, they will need to do what they should have been doing in the past, making sure that everybody who repairs their vehicles have access to the right information and tools to do the job.

While AAIA strongly supports the passage of right-to-repair legislation, we were hopeful that a non-legislation agreement could be reached that would provide for a third-party voluntary enforcement program. As we discussed during the November hearing on right to repair, the aftermarket met with the car companies last summer at the Better Business Bureau to develop a non-legislative alternative to passage of H.R. 2048. Although much progress was made during these

negotiations, the discussions broke down over three major issues: a commitment from the car companies to make all information necessary for our tool suppliers to include the same repair and diagnostic capabilities that are available to new car dealers through car company proprietary tools; two, whether all manufacturers will provide independents the ability to access vehicle immobilizer systems for both diagnostic and repair purposes. These systems provide that a chip in the key must perform an electronic handshake with another chip in the engine system in order for a vehicle to be started. If certain parts are replaced in the engine, the system must be reinitialized. Further, technicians must have the ability to diagnose problems with the immobilizer system that, for example, could be preventing the vehicle from being started. Three, an agreement over a system of governance of the organization that will oversee a non-legislative agreement that would be fair and effective. Although AIAA fully supports broad representation on a full board, there needs to be a smaller executive committee that will over see the day-to-day work of the organization. The executive committee should be split evenly between the independent aftermarket and the car companies to ensure a fair and one that is not nominated by one side or the other. We further agree with the suggestion made during the last hearing that the executive board should contain independent representatives to ensure fairness and credibility for the organization.

I want to reiterate that AIAA feels strongly that a non-legislative agreement that has a strong and comprehensive commitment from each manufacturer, which is enforceable by a third party, is preferable over legislation. However, the current effort to formalize NASTF, while a step in the right direction, is a long way off from taking the place of right-to-repair legislation. The truth is that the work that was accomplished during the Better Business Bureau negotiations last summer moved our industries very close to a resolution that not only was acceptable, but would go a long way toward improving information tool availability for our industry. Unfortunately, the discussions currently taking place at NASTF appear to be making changes that would move us further away from an acceptable agreement. For example, the discussions of our third-party enforcement center on developing arbitration system that will move any information dispute into a system that would be costly and time-consuming and probably rarely used by independents. Further, while the governance structure now approved by NASTF has a wide representation from industry, the same groups that ran NASTF are still on the executive board in this version of NASTF. Unless the organization completely changes its leadership and the way it operates, it will continue to be ineffective and lack credibility.

The bottom line is that we should not be reinventing the wheel, but instead building on the progress we made during the BBB negotiations. To that end, Coalition for Auto Repair Equality sent a letter to the vehicle manufacturers outlining a resolution to the three issues discussed previously. I have attached a copy to my testimony. On every issue, the letter represented an attempt by our industry to compromise our position in order to address car company concerns. To my knowledge, CARE has not received a response to that letter.

Further, at the request of this subcommittee, the aftermarket brought some of its leaders to Washington to meet with the manufacturers in order to see if the final issues regarding a non-legislative agreement could be resolved. Unfortunately, the manufacturers brought people to the meeting that they admitted could not make decisions regarding a possible agreement. Further, they only allotted 1 hour to this meeting, and this is insufficient time to seriously negotiate the remaining issues.

Based on their response, or lack of response, it appears clear to us that the manufacturers, despite all of their public talk, do not want to resolve this issue and are hoping the legislation just goes away. Therefore, on behalf of the broad list of national and State aftermarket groups, consumer groups, and small business groups, we urge the subcommittee to wait no longer and move soon to enact right-to-repair legislation. U.S. consumers deserve some assurance that the vehicles they purchase will be repairable anywhere they choose and that the system is not controlled by the manufacturer.

Thank you for the opportunity to share our views on this important issue. And I look forward to answering any questions you might have.

[The prepared statement of Aaron M. Lowe follows:]

PREPARED STATEMENT OF AARON M. LOWE, VICE PRESIDENT, GOVERNMENT AFFAIRS, AUTOMOTIVE AFTERMARKET INDUSTRY ASSOCIATION

The Automotive Aftermarket Industry Association is pleased to provide testimony in support of the "Motor Vehicle Owners' Right to Repair Act" (HR 2048) sponsored by Representative Joe Barton and now co-sponsored by a bi-partisan list of 102 legislators. AAIA is a Bethesda, Md.-based trade association whose more than 8,000 member companies and affiliates manufacture, distribute, and sell motor vehicle parts, accessories, service, tools, equipment, materials and supplies. Through its membership, AAIA represents more than 100,000 repair shops, parts stores and distribution outlets.

There has been an independent aftermarket around in this country almost since the invention of the automobile. Most surveys indicate that between 70 to 80 percent of car owners choose to patronize independent repair shops over the new car dealer for maintenance and repair of their vehicle after their new car warranty has expired. We attract many consumers because our members are often more affordable and convenient than the local dealer. More often than not, independents are able to provide effective repairs for their customers on the same day that they bring their vehicle into the shop. This minimizes the inconvenience for today's stressed out car owners and keeps repair prices affordable.

However, today's highly sophisticated vehicles are posing extensive challenges for all service facilities, whether dealer or independent. Repairing late model vehicles requires sophisticated tools, information and training. While the independent service industry is more than willing to take up this challenge, much of the information and tools are only available through the original equipment manufacturer. As vehicles become more sophisticated, the need for enhanced information from the car company will only grow. Some vehicle manufacturers have recognized the importance of having an effective independent repair industry and have made the tools and information widely and affordably available. Other car companies have either made access difficult, or have totally prevented access to the information needed to provide repairs for their late model vehicles. If something is not done, many motorists may find themselves forced to wait for appointments with the new car dealers, and paying substantially more for the repairs once they are there.

The Right to Repair act is really very simple; it seeks to ensure that manufacturers share the same information and tools with independent repair facilities that they provide to their dealer. Of course, this is not a free ride for the aftermarket since car companies would be permitted to charge independents for access to the needed information and tools. For the many car companies that have claimed repeatedly that they are making everything available, passage of this legislation will impose no new requirements since they are already in compliance. For those that have been withholding information or tools, they will need to do what they should have been doing in the past, making sure that anybody who repairs their vehicles have access to the necessary information and tools to do the job.

Let me clear; we are not asking for proprietary or patent information. Our manufacturing members do not need access to the car company blueprints for developing parts. In fact, the aftermarket has produced competitive replacement parts that are as good, and in many cases, better than the parts produced by the vehicle manufacturers. Sometimes the parts are sourced from the same company. What our members are concerned about is that if access is denied to the independent service facilities, our manufacturers and distributors will lose their primary market since most new car dealers only source from the car company.

The trade secret protections provided in the current version of HR 2048 are virtually the same as those in the Clean Air Act which requires the sharing of emissions related service information and tools. These rules have worked for the past 10 years without a single challenge from the manufacturers. Therefore, we are stunned to continue to hear from the manufacturers that we are after their intellectual property. We have made it clear to the manufacturers that it is not our intention to obtain this information through this legislation and have offered to work with the car companies and the committee to clarify this issue. Thus far, other than unsubstantiated allegations, no one has produced any examples as to how the current language falls short. Of course, as we move toward mark-up, we are still open to revisit this language in order to ensure that the legislation only requires the sharing of the same service information and tools that are available to the dealer.

While AAIA strongly supports passage of right to repair legislation, we were hopeful that a non-legislative agreement could be reached that would provide for a third party voluntary enforcement program. As we discussed during the November hearing on Right to Repair, the aftermarket met with the car companies last summer at the Better Business Bureau to develop a non-legislative alternative to passage of HR 2048. Although much progress was made during these negotiations in developing an effective program for ensuring service information and tools are available to our industry, the discussions broke down over three major issues. Resolution of the following issues is key to ensuring the future competitiveness of the independent service industry.

1. **Car companies must make all information necessary for our tool supplier to include the same repair and diagnostic capabilities that are available to new car dealers through car company proprietary tools.** Since most independents work on multiple makes and models of vehicles, they often purchase tools that contain the capabilities to work on many different vehicle makes. Not only is this more cost effective, but it also ensures competition and thus makes the tools more affordable. While the provision to tool suppliers of this information can be subject to whatever commercial terms are appropriate, independents need to be able to obtain aftermarket tools that have the same capabilities as the dealer tools.
2. **Independents must have the ability to access vehicle immobilizer systems for both diagnostic and repair purposes.** These systems provide that a chip in the key must perform and electronic handshake with another chip in the engine system in order for the vehicle to be started. If certain parts are replaced in the engine, the system must be reinitialized such that the two chips can talk to each other and the ignition will operate properly. Further, technicians must have the ability to diagnose problems with the immobilizer system that for example could be preventing a vehicle from being started. While car companies claim that they cannot provide this information without risking that a vehicle will be stolen, we are not so certain this is entirely true. Some car companies are currently providing this information without jeopardizing vehicle security. In addition, this information is available to the new car dealer which means that it is being shared outside of the car company offices. We do not believe that the dealer is any more trustworthy than the independent service industry. The bottom line is that the immobilizer is a major issue in today's repair market and access by the independent repair industry must be resolved by every manufacturer or competition and car owner choice will suffer as a direct result.
3. **Governance of the organization that will oversee a non-legislative agreement must be fair and effective.** Although AAIA fully supports broad representation on a full board by the various parties that are involved in the repair industry, we also strongly believe that there needs to be an executive committee that will oversee the day-to-day work of the organization. In order to ensure fairness, this executive board should be split evenly between independent aftermarket and the car companies to ensure that it is fair and not dominated by either side. Furthermore, we agree with the suggestion made during the last hearing that the executive board contains independent representatives to ensure fairness and credibility for the organization.

I want to reiterate that AAIA feels strongly that a non-legislative agreement that has strong and comprehensive commitments from each manufacturer and, that is enforceable by a third party is preferable over legislation. However, the current effort to formalize the National Automotive Service Task Force (NASTF), while a step in the right direction to improve information availability, is a long way off from taking the place of Right to Repair legislation. In fact, it is unclear whether the governance structure is sufficiently different from that of the previous NASTF and whether any discussions over information availability will be acceptable to us and the car companies.

The truth is the work that was accomplished during the Better Business Bureau negotiations last summer moved our industry very close to a resolution that was not only acceptable, but would go a long way toward improving information and tool availability for our industry. Unfortunately, it seems that the discussions taking place in the current NASTF arena are attempting to make changes to that work that will move us further away from an acceptable agreement. For example, the discussion over a third party

enforcement program centers on developing an arbitration system that will move any information dispute into a system that will be costly and time consuming and probably rarely used by independents. Further, while the governance structure now approved by NASTF has a wide representation from the industry, the same groups that ran the last NASTF are still on the executive board for this version of NASTF; the Automotive Service Association, the car companies and the tool companies. Unless the organization completely changes its leadership and the way it operates, it will continue to be ineffective and lack credibility.

The bottom line is that we should not be reinventing the wheel, but instead, building on the progress that we made in the Better Business Bureau negotiations. To that end, the Coalition for Auto Repair Equality (CARE) sent a letter to the vehicle manufacturers that outlined a resolution to the three issues listed previously. I have attached a copy of this letter. On nearly every issue, the letter represented an attempt by the aftermarket to compromise our position in order to address car company concerns. To my knowledge, CARE has yet to receive a response to this letter from the vehicle manufacturers.

Further, at the request of this subcommittee, the aftermarket brought some of its leaders to Washington to meet with the manufacturers in order to see if the final issues regarding a non-legislative agreement can be resolved. Unfortunately, the manufacturers brought people to the meeting whom they admitted could not make any decisions regarding a possible agreement. Further, the manufacturers only allotted about one hour to the meeting, stating that they had a more important meeting to attend.

I want to thank the staff of this subcommittee for the extensive efforts they have made to help bridge the gap between the car companies and the aftermarket. You have gone way beyond the call of duty to try to obtain a non-legislative agreement that would ensure motorists continue to have a choice in automotive repair. However, it appears clear to us that the manufacturers, despite all of their public talk, do not want to resolve this issue and are hoping that this legislation goes away.

Therefore, AAIA, consumer groups, and small business organizations urge this subcommittee to wait no longer, but to move as soon as possible to enact Right to Repair legislation. Every day, more and more vehicles are entering the market, and we can no longer wait while the manufacturers use the present process to stall attempts to ensure competition in the vehicle repair market. U.S. consumers deserve some assurance that the vehicles they purchase can be repaired anywhere they choose and a system that is not controlled by the manufacturers.

Mr. Chairman and members of this subcommittee, whether you believe the manufacturer's contention that everything is available; or if you believe the many technicians and shop owners that have come before this subcommittee that have questioned this conclusion and warned that competition is being threatened; most everyone agrees that car owners should be able to get their vehicle repaired where they choose. This legislation will only serve to ensure that car owners remain in the driver's seat when it comes to deciding who will repair their vehicle now and in the future.

Thank you for the opportunity to share our views on this important issue and I am available to answer any questions you might have.

ATTACHMENT #1

March 8, 2006

To: Mr. Mike Stanton
Vice President Government Affairs, Alliance of Automobile Manufactures

Mr. John Cabaniss
Director Environment and Energy, Association of International Automobile Manufactures

From: David Parde
President, Coalition for Auto Repair Equality

RE: RIGHT TO REPAIR NEGOTIATIONS

As you will recall, at the end of the Better Business Bureau negotiations this past summer, several issues were left unresolved at the end of the approximately two months of talks. Those remaining issues concerned NASTF Governance, Tools and Tool Information, the cost of Tools and how that would be handled in the enforcement process, Penalties, and Service Information. Here is our current position on these issues.

GOVERNANCE

CARE has supported several different configurations of a board, which originally included a 4-4 split of interested parties, an evenly split board with independent board members added, a completely independent board, and most recently we propose a compromise that includes the NASTF proposed board with a smaller, executive board composed of the parties of direct interest to the issue of information availability.

We believe that a smaller executive board is justified for several reasons. First, putting aside for the moment the issue of whether the makeup of the 15 member board is "fair" or not, we do not believe that the **structure** of the NASTF board is conducive to providing strong leadership in resolving the issues, as they may come along, of information availability. We say this for two reasons. One, we believe that a 15 member board is too large to effectively conduct business. We have consistently maintained throughout our negotiations that the board must be kept small to be effective. We have always been open to wide participation in working groups and committees.

Secondly, many of the 15 proposed NASTF board members are duplicative of one another and many do not get into the day to day issues of shops obtaining the necessary tools and information. They are involved in the broad issues of reparability, but not whether a piece of information is available when the car is in the shop.

We believe that a smaller evenly divided board could tackle issues of information availability in a timely and fair manner, while the broader issues that may be only tangentially related to information availability can be handled by the larger board.

In summary, we believe there is a lot duplication in the NASTF board, with the same groups represented multiple times. Moreover, most of these groups aren't directly involved in the issue. They may be necessary to other NASTF concerns, but they do not add value, in our opinion, to resolving the core issues. They do, however, add a lot of uncertainty.

For these reasons, we would propose a 3-3-2 executive board that is composed of CARE and AAIA and AASP, on our side, AAM and AIAM and ASA or the Dealers (or whoever you want) on yours, and two independents. We would propose as the

independents AAA and AARP or a similar type organization, and a consumer group, but if these are not acceptable they could be chosen by the FTC upon mutual agreement.

TOOLS / TOOL INFORMATION

Manufacturers shall make available to equipment and tool companies all generic and enhanced (car company specific) Tool Information necessary to produce generic tools that contain the same diagnostic and repair capabilities that are available to all franchised dealers.

Restricting only "scan tool information" to the aftermarket is not acceptable. On this issue we cannot move off what was in our final proposal before the BBB.

Tool issues need to be under the control of NASTF, but, the aftermarket agrees to leave the details of exactly how this would be implemented to future negotiations, if, the manufacturers would commit both to fully provide tool information and to a timetable for resolving the details.

COST OF TOOLS

Reluctantly, we would agree not to press (at this time) to have the cost of tools issue be enforced by NASTF.

PENALTIES / ENFORCEMENT

We accept the $ 2,000 in monetary penalties proposed by the BBB document. We continue to demand an independent third party enforcement mechanism be put into place. We would recommend that the BBB be that third party.

IMMOBILIZERS

The aftermarket is generally happy with the method being used by Ford to resolve this issue. We would recommend and encourage all manufacturers to adopt a system like Fords.

However, we recognize that due to security concerns, certain manufacturers feel they cannot provide tool information that is necessary to work with vehicle security or immobilizer systems to tool manufacturers. Therefore, it is appropriate that the aftermarket and the manufacturers develop a method that will permit manufacturers to provide independent technicians with the ability to obtain within 24 hours or less, and at a fair and reasonable price, the necessary tools and information to fully repair vehicles equipped with immobilizer systems. This interim method will provide manufacturers with a period of time, not to exceed two (2) years to redesign their vehicle systems such that providing the necessary tool information to aftermarket tool companies will not jeopardize these systems.

NOTE - we want it recognized that not all problems linked to the immobilizer systems are security related.

SERVICE INFORMATION

All service related information shall be made available when it is generally available to all dealers.

Finally, we believe that any final agreement document needs to be signed by all manufactures within a reasonable period of time not to exceed (2 weeks). We would like to remind the committee that the CARE board is in town on March 15th, and we stand ready and willing to meet with equal participants from the manufacturers to resolve these issues at that time.

ATTACHMENT #2

Motor Vehicle Owner's Right to Repair Act
Groups Supporting H.R. 2048

National Aftermarket Groups

Alliance of Automotive Service Providers (AASP) – www.autoserviceproviders.com
Automatic Transmission Rebuilders Association – www.atra.org
Automotive Aftermarket Industry Association (AAIA) - www.aftermarket.org
Automotive Engine Rebuilders Association (AERA) - www.aera.org
Automotive Oil Change Association – www.aoca.org
Automotive Parts Rebuilders Association (APRA) - www.apra.org
Automotive Warehouse Distributors Association (AWDA) - www.awda.org
Coalition for Auto Repair Equality (CARE) - www.careauto.org
Consumer Electronics Association (CAE) – www.ce.org
Retail Industry Leaders Association (RILA) – www.retail-leaders.org
Service Station Dealers of America (SSDA) - www.ssda-at.org
Tire Industry Association (TIA) - www.tireindustry.org

National Organizations

AAA – www.aaa.com
National Federation of Independent Businesses - www.nfib.com
National Grange - www.nationalgrange.org
The 60 Plus Association - www.60plus.org
Mobile Enhancement Retailers Association (MERA) - www.merausa.org
Motorcycles Rider Foundation – www.mrf.org

State Aftermarket Groups

Alliance of Automotive Service Providers
- Massachusetts/Rhode Island (AASP-MARI) – www.aaspmari.org
- Minnesota (AASP-MN) – www.aaspmn.org
- New Jersey (AASP-NJ) – www.aaspnj.org
- Pennsylvania/Delaware (AASP-PA) – www.aasp-pa.org

Automotive Aftermarket Associations (ASAAA) - www.asaaa.com
Automotive Aftermarket Assn of the Carolinas & Tennessee (AAACT)
Automotive Aftermarket Association Southeast (AAAS) – www.aaas.us
Automotive Service Councils of California (ASCCA) – www.ascca.com
Automotive Wholesalers of Arizona (AWOA) - www.awoaonline.org
Automotive Wholesalers of Illinois (AWOI) – www.awoi.com
Automotive Wholesalers of Texas (AWOT) – www.awot.org
California/Nevada Automotive Wholesalers Association (CAWA/NAWA) - www.cawa.org
Chesapeake Automotive Business Association (CABA) – www.caba.biz

Independent Garage Owners of North Carolina (IGONC) – www.igonc.com
Florida Automotive Industry Association (FAIA) – www.faia.org
Kentucky/Indiana Automotive Wholesalers Association (KAWA/IAWA)
Louisiana Automotive Industries Association (LAIA)
Michigan Automotive Parts Association (MAPA)
Midwest Automotive Industry Association (MAIA)
New York State Automotive Aftermarket Association (NYSAAA)
Ohio Valley Automotive Aftermarket Association (OVAAA) – www.ovaaa.org
Oregon Automotive Parts Association (OAPA)
Pennsylvania Automotive Wholesalers Association (PAWA)
Petroleum Retailers & Auto Repair Assoc. (PRARA)
Rocky Mountain Automotive Wholesalers Association (RMAWA)
Virginia Automotive Parts & Service Association (VAPSA)
Washington Automotive Wholesalers Association (WAWA) – www.wawa-pas.com
Wisconsin Automotive Parts Association (WAPA) - www.wapaonloine.com

MR. STEARNS. And I thank you.

Mr. Gorman.

MR. GORMAN. Mr. Chairman, thank you for the opportunity to testify before this committee.

MR. STEARNS. You need to put your mic on. Is it on? Just move it closer.

MR. GORMAN. Okay.

MR. STEARNS. Just move the mic a little closer.

MR. GORMAN. Is that good?

MR. STEARNS. That is perfect. Thank you.

MR. GORMAN. Okay. Thank you.

I thank you for the opportunity to testify before this committee. I am Charles Gorman, the newly-elected Chairman of the National Automotive Service Task Force, NASTF. I am also the Executive Manager of the Equipment and Tool Institute, a trade association representing the major automotive tool and equipment manufacturers.

The purpose of my testimony today is to inform this committee about NASTF's current situation and its future. NASTF has been somewhat misrepresented by both sides of the right-to-repair debate. In past testimony, one side claimed that NASTF does not attempt to resolve complaints regarding the availability of information. This isn't true. I am also the Chairman of the Equipment and Tool Committee of NASTF, and I can tell you that we have made tremendous strides in gathering the information necessary to build tools that emulate dealership tools.

Similar strides are being made in the Vehicle Security Committee. They have accomplished several key objectives to help move them closer to implementing a Secure Database Release Model and a locksmith registry.

The other side has made some incorrect statements as well. One person testified that last year NASTF received 48 complaints regarding

service training and tool information. All 48 complaints were resolved. This, of course, isn't true. There were answers, but in some cases, those answers were not what the complainants wanted to hear, or were willing to accept. The current process is a little slow and lacks incentive for automakers to comply.

The reality is that NASTF, although successful, is not as successful as it needs to be. And this brings us to the current situation.

NASTF is in the process of reorganizing. On October 19, 2005, after the FTC Better Business Bureau negotiations ended without resolution, a group of automotive-related associations representing a complete cross-section of the automotive repair marketplace met to begin the process. On November 2, 2005, at the NASTF general meeting, members present voted unanimously to go forward with the plan to reorganize. The planning committee met three times. There were two formal meetings facilitated by the Society of Automotive Engineers and one conference call. On April 4, 2006, NASTF's new Board of Directors met for the first time and elected officers.

The goal is to create a permanent organization that can not only do a better job of processing complaints regarding missing information, but also provide a means of enforcement.

To date, we have accomplished quite a bit. We have created an initial funding model and received commitments from six key associations to fund NASTF for the first year. We have appointed a Board of Directors representative of most of the industry segments. We are currently in negotiations with ASE to incorporate NASTF as a C-6 not-for-profit corporation. The ASE will also handle the day-to-day management of NASTF, providing us with a full-time staff person, along with part-time support in the financial, communications, and IT areas. This will allow NASTF to respond quicker to service information gap complaints.

Documents originally drafted as part of the FTC BBB negotiations last summer are being edited so that all parties can agree to them. This includes the Third Party Arbitration Process document. There were key agreements made during these negotiations last summer, and we will keep the momentum going. There were also some important issues left for later in these documents, and we will add language to cover the missing segments. We are off to a great start, but there is still much work to be done. And this brings us to the future.

In addition to the work that is ongoing, we have specifically identified the work items we need to complete. Among those are things such as bylaws and a sustainable funding model, et cetera.

The Board of Directors has also identified some new goals. Many of the problems relating to information availability stem from the

automobile manufacturers' inability to predict the need for certain information. Automakers today are not vertically structured as they once were. They no longer own all of the rights to some specific service information. These rights may belong to a component or system supplier. The NASTF Board of Directors has discussed the possibility of sponsoring best practices efforts within existing standards organizations, such as SAE. These best practices will provide guidelines to the automakers to ensure that the need for service information is included in the design and manufacturing processes and included as part of supplier agreements. NASTF's job could be made a lot easier in the future if potential service information problems are solved before the vehicles are designed and manufactured.

We have also discussed the role of the Communications Committee. Automakers respond to industry and public opinion regarding their products. NASTF will be looking for ways to report to the automotive trade press as well as the general press regarding automakers that have shown a willingness to provide repair information beyond the minimum. We also plan to publicize those instances where automobile manufacturers have refused to provide information and the reasons for doing so are insufficient.

It is difficult to get all of the different interests within this industry to agree on something as complex as the availability of automotive service information, but a good faith effort is underway. It is my belief that the work currently being done by NASTF needs to be done regardless of whether it is backed by legislation or not. Many of the problems facing us can only be solved by industry experts. These experts need a forum where problems can be heard and solutions founds. I believe NASTF is that forum.

[The prepared statement of Charles G. Gorman follows:]

PREPARED STATEMENT OF CHARLES G. GORMAN, CHAIRMAN, NATIONAL AUTOMOTIVE TASK FORCE

INTRODUCTION

Thank you for the opportunity to testify before the Commerce, Trade and Consumer Protection Subcommittee regarding H.R. 2048 the "Motor Vehicle Owners' Right to Repair Act. I am Charles Gorman, the newly elected Chairman of the National Automotive Service Task Force. I am also the Executive Manager of the Equipment and Tool Institute, a trade association representing the major automotive tool and equipment manufactures.

The purpose of my testimony today is to inform this committee about NASTF's current situation and its future.

NASTF has been somewhat misrepresented by both sides of the "Right to Repair" debate. In past testimony one side claimed that NASTF does not attempt to resolve complaints regarding the availability of information. This is not true. I am also the chairman of the Equipment & Tool Committee of NASTF and I can tell you that we have

made tremendous strides in gathering the information necessary to build tools that emulate dealership tools.

Similar strides are being made in the Vehicle Security Committee. They have accomplished several key objectives to help move them closer to implementing a Secure Data Release Model (SDRM) and a locksmith registry.

The other side has made some incorrect statements as well. One person testified: "Last year, NASTF received 48 complaints regarding service, training and tool information. All 48 complaints were resolved". This, of course, isn't true. There were answers, but in some cases those answers were not what the complainants wanted to hear or were willing to accept. The current process is slow, and lacks incentive for automakers to comply.

The reality is that NASTF, although successful, is not as successful as it needs to be. This brings us to the current situation.

CURRENT SITUATION

NASTF is in the process of reorganizing.

On October 19, 2005 after the FTC BBB negotiations ended without resolution, a group of automotive related associations representing a complete cross section of the automotive repair marketplace met to begin the process. On November 2, 2005 at the NASTF general meeting the members present voted unanimously to go forward with the plan to reorganize. The planning committee met 3 times. There were two formal meetings facilitated by the Society of Automotive Engineers and one conference call. On April 4, 2006 NASTF's new Board of Directors met for the first time and Elected officers.

The goal is to create a permanent organization that can not only do a better job of processing complaints regarding missing information, but also to provide a means of enforcement.

To date we have accomplished quite a bit. We have created an initial funding model and received commitments from six key associations to fund NASTF for the first year. We have appointed a Board of Directors representative of most industry segments. We are currently in negotiations with ASE to incorporate NASTF as a C-6 not-for-profit Corporation. ASE will also handle the day to day management of NASTF providing us with a fulltime staff person along with part time support in the financial, communications and IT areas. This will allow NASTF to respond quicker to service information gap complaints.

Documents originally drafted as part of the FTC – BBB negotiations last summer are being edited so that all parties can agree to them. This includes the Third Party Arbitration Process document. There were key agreements made during those negotiations last summer and we will keep the momentum going. There were also some important issues "left for later" in those dicuments and we will add language to cover the missing segments. We are off to a great start, but there is much work to be done. This brings us to the future.

THE FUTURE OF NASTF

In addition to the work that is ongoing, we have specifically identified the work items we need to complete. Among other things these include bylaws and a sustainable funding model.

The Board of Directors has also identified some new goals. Many of the problems relating to information availability stem from the automobile manufacturers' inability to predict the need for certain information. Automakers today are not vertically structured as they once were. They no longer own all the rights to some specific service information. These rights may belong to a component or system supplier. The NASTF Board of Directors has discussed the possibility of sponsoring "best practices" efforts

within existing standards organizations such as the Society of Automotive Engineers. These best practices will provide guidelines to the automakers to insure that the need for service information is included in the design and manufacturing processes and included as part of any supplier agreement. NASTF's job could be made a lot easier in the future if potential service information problems are solved before vehicles are designed and built.

We have also discussed a new role for the Communications Committee. Automakers respond to industry and public opinion regarding their products. NASTF will be looking for ways to report to the automotive trade press as well as the general press regarding the automakers that have shown a willingness to provide repair information beyond the minimum. We also plan to publicize those instances where an automobile manufacturer has refused to provide information and the reasons for doing so are insufficient.

CONCLUSION

It is a difficult task to get all the different interests within this industry to agree on something as complex as the availability of automotive service information, but a good faith effort is under way. It is my belief that the work currently being done by NASTF needs to be done regardless of whether it is backed by legislation or not. Many of the problems facing us can only be solved by industry experts. These experts need a forum where problems can be heard and solutions found. I believe NASTF is that Forum.

MR. STEARNS. Thank you, Mr. Gorman.

I will start off the questions.

Just sort of a general overview. Ms. Marzulla, I think that you and Mr. Lowe are going to have to make the argument, based on what the Federal Trade Commission said that there were no complaints. They don't have the resources if this bill passed. So you have got to make the arguments here.

Now based upon the evidence, it appears that this bill is not needed, but I think you have the heart of most consumers. They feel that the automobile is complicated. They can't get it fixed. A little light goes wrong, and they have got to pay $150 to have it serviced. There is just a general feeling, I think, to the consumers that, "Golly, I sure would like to go to my local gas station to get this fixed, and I have that right." So you know, you have the heart argument, but the facts and the mind argument doesn't quite show it.

Now Mr. Gorman, I understand that you are President of the Electronic Tool Institute, also. And as I understand the Electronic Tool Institute, all of the manufacturers have to give you all of the information on the parts, is that correct?

MR. GORMAN. Right now, the only law that requires that is the Clean Air Act.

MR. STEARNS. Yes, but for emissions.

MR. GORMAN. For emissions-related.

MR. STEARNS. Okay. Have you had any trouble getting the car manufacturers to give you all of the information?

MR. GORMAN. Yes.

MR. STEARNS. You have? And so--

MR. GORMAN. But I want to say that it is just a few. The majority of manufacturers cooperate completely.

MR. STEARNS. And over what period of time have you gotten these complaints?

MR. GORMAN. Oh, complaints?

MR. STEARNS. Are they complaints? Or excuse me, failure to give you the information, over what period of time?

MR. GORMAN. Well, since the beginning, since there have been, you know, computers on vehicles.

MR. STEARNS. Okay. So would that be 15 years?

MR. GORMAN. Since 1981.

MR. STEARNS. Okay. So 25 years you have had cases where automobile manufacturers would not give you the information?

MR. GORMAN. Correct.

MR. STEARNS. Okay. Is it significant enough to say that it is a problem? You said yes earlier.

MR. GORMAN. You have to put it in perspective. It is some--

MR. STEARNS. Over 25 years, did you get 100 companies that would not--

MR. GORMAN. Well, the way we operate--

MR. STEARNS. Not 100 companies, but did you get the major manufacturers many, many times not give you the information?

MR. GORMAN. I think it is safe to say that with major manufacturers, we have no problem. It is just some of the small manufacturers, low volume.

MR. STEARNS. Okay. And why is that, do you think?

MR. GORMAN. I am not sure. You know, I think it--

MR. STEARNS. Now a lot of these parts that are made are made in China, and I think this is for Mr. Stanton, because a lot of the manufacturers today manufacture their parts in China, isn't that true?

MR. STANTON. All manufacturers are looking for good quality, competitive parts.

MR. STEARNS. Well, that is a good answer.

Okay. I am told that automakers and their aftermarket buy many of their parts from the same sources, such as makers Dana and Federal Mogo. If so, why is there concern that H.R. 2048 would somehow allow aftermarket parts people to undercut automaker parts?

MR. STANTON. Well, I think that the issue goes to whether or not the aftermarket will be able to continue, which we think they should be able to, to reengineer the part and then sell it or whether or not they get the

manufacturers' algorithms and plans and specs so it would avoid the reengineering of the part.

MR. STEARNS. Okay. I am asking a question that, since Chairman Barton is not here, I am going to ask on his behalf. And Mr. Stanton, this would go to you. In September of 2002, 35 automakers of the Automobile Alliance and Association of International Automobile Manufacturers signed a letter of agreement with Senator Dorgan to provide the information sought by the aftermarket. And I could give you all of the details, the different things they talked about. So I think Chairman Barton's idea was to codify this agreement that you folks signed in 2002. So his question is since everybody signed this agreement in 2002, and he feels strongly that this bill just codifies that language. So his question is how does the language in the bill H.R. 2048 differ from the language that is in this codification? I can read it to you, if you want, with respect to what information is being asked for. Why is the language in the bill, which mirrors your own signed agreement, somehow disagreeable to the automakers? And please be specific.

MR. STANTON. I will try to be as specific as I can. The agreement is that we would provide all of the tools, the training information, and the services needed, the same that we give to our dealers, that we make available to the dealers. We would make it available to the aftermarket as well. This legislation does something quite else. First of all, it creates a duty for manufacturers to provide certain information. And it also establishes rights. And the rights to any person in the United States that is 16 years or older will then have the right to this information, the way that the bill is currently written. This presents, in our view, the opportunity for regulation where it is not necessary and also for litigation, because of the definitions. And you raised the question earlier as to the question of what does the word "capability" mean. If we have a duty, and others have rights, and these are newly-created duties and rights, I think it is right for litigation in the States under the consumer protection laws.

MR. STEARNS. Ms. Marzulla, would you like to reply to that, because I think Chairman Barton's basic point is that the folks here, the Automobile Alliance, all signed this agreement? And this draft legislation just codifies it. You have heard that Mr. Stanton does not agree, that the agreement he has signed, it goes much further. What is your opinion?

MS. MARZULLA. Well, Mr. Chairman, I have to confess that I was surprised to hear Mr. Stanton's answer, because, in fact, I have a copy of the letter before me, and I was reading it as he was speaking. It seems to me that the legislation pretty much mirrors and tracks pretty darn closely the letter. And of course, if it were entered into as an agreement and

signed by all of the parties, of course it would likewise create binding obligations, contract obligations. And theoretically, car owners could be intended third-party beneficiaries of the agreement likewise able to enforce the agreement. So I am surprised and mystified as to why the manufacturers, on the one hand, would be willing to enter into a binding contract and yet, at the same time, find the legislation which basically tracks almost close to verbatim. I haven't gone through and done a side-by-side work check, checking the legislation against the agreement, but just a quick side-by-side comparison, it looks pretty darn close.

MR. STEARNS. To Lowe and Mr. Gorman and then I am complete. Do you have any comments in reference to this discussion on the bill as attempting to codify the agreement from September of 2002 that the 35 automakers have signed?

MR. LOWE. Yes, I mean, I actually think it is pretty interesting that the biggest problem he had was that it imposed an obligation on them to share the information and tools with our industry, which is exactly what we are attempting to do. We are concerned that the letter doesn't provide any assurance that would provide that information. The language mirrors it, but what it does is it says, "You will make sure that the information is available to our industry." And that is what we really need to have that assurance.

MR. STEARNS. Mr. Lowe, staff has advised me, you mentioned in your opening statement that Mr. Stanton never replied to you, and I have a copy of the letter here of March 14, just for your information. And you are welcome. We can show it to you. Is that correct, Mr. Stanton, that--

MR. STANTON. That is correct.

MR. LOWE. I think the letter didn't respond to our points that we made in the offer.

MR. STEARNS. But the point is--

MR. LOWE. What the letter said was you need to go through this other process.

MR. STEARNS. But the point is that he did respond. Yes.

Mr. Gorman.

I mean, all I am asking you is if this agreement that they signed in 2002, these 35 automakers, do you think the codification of that in law is a reasonable thing?

MR. GORMAN. Yes. I think that the Dorgan letter is what spurred on the founding of NASTF in the first place. But I think the devil is in the details, as usual. And there is a lot more in the legislation than there is in that letter. And of course, there will be a lot more on top of that when you get to rulemaking. So I think that, in the one case, the letter is very flexible whereas in the lawmaking and rulemaking that follows, it would become very specific, and I think that is what--

MR. STEARNS. Okay.

And Ms. Schakowsky.

MS. SCHAKOWSKY. I would like to follow up on the chairman's comments with Ms. Marzulla and Mr. Lowe.

How do you explain the fact that there are no complaints and the FTC has no evidence that this is a problem?

MS. MARZULLA. Well, if I could jump in first, and I am sure Mr. Lowe could respond to that more directly than I can, because I will confess that I am not here as an expert to talk about the complaints and so forth, but listening to the chairman's testimony today, I agree that it is one of those issues that is sort of hard to get your arms around. And I can speak as a consumer that I, myself, would not necessarily know where to go with complaints about my own vehicle, although I am immersed in the legalities of the issue. I think it is one of those issues that a consumer has a check engine light come on in his vehicle. For example, I own a 2001 Lexus, and I have driven for months with that check engine light on, because I don't want to drive out to Rockville to the dealer, you know, to take a morning off from work to go drive to the dealer. I am not going to file a lawsuit. I haven't filed a complaint with the FTC, but it is annoying. Whereas I have a 1996 RAV-4 that my teenage daughter drives. I can take that car down to the corner garage that I have a relationship with. I can talk to the technician. I can tell him that my teenage daughter drives the car, and he has known my daughter since she was a baby. I can tell him to make sure that the brakes are fixed. I feel comfortable with him. The dealership repair shop probably does an excellent job, but they don't even have my name spelled correctly in the database, and every time I have taken the car in for the last 5 years, I have to explain to them what my name is, and yes they do have my records in the system. So I think it is just one of those problems that perhaps isn't easily measured by some of the more standard measuring techniques.

MS. SCHAKOWSKY. Mr. Lowe.

MR. LOWE. I think, you know, you have to realize that this is an extremely competitive industry. I have been involved in the industry for a long time. Small, competitive shops are working hard to repair that car. The last thing that a car repair shop wants to do is send that car back to the dealer unless they absolutely have to. And when they do find that they can't get the information, they are going to go whatever means they can to get that information. And what is happening now in the industry, is that they are forced to go behind the back door to get this information through the dealer. They have to get it through friends in the dealer. They have to learn how to find it. The car owner doesn't know why it takes--

MS. SCHAKOWSKY. Let me interrupt you for a second.

I am co-sponsor of the legislation, but I think it is a valid question to ask. And the ranking democrat on the Full Committee said that this is a solution looking for a problem.

MR. LOWE. Yes.

MS. SCHAKOWSKY. And let me just say that without some sort of concrete evidence that there is a problem, and by that, there are certain measurements. And as someone who has been a long-time consumer advocate and organizer, I would say to you that the failure to establish that there is some sort of a problem in some sort of a measurable way is a very strong argument against this legislation. And if you have people who have run into problems, and if the repair shops have run into problems, I would suggest that there has to be some way to quantify that in order to bolster the argument. I think this is a valid critique of the legislation.

MR. LOWE. Yes. We have surveyed the service industry, and we found that 53 percent of the industry has at least one vehicle per month that they have had to send back to the dealer. We have had 74 percent of technicians say they experience problems frequently. ASA the group is supporting it, but members of that group have had problems getting information and have had to send cars back to the dealer in fairly sizeable numbers. So we know that there is a problem out there from our membership. We have met with the FTC, and we have presented them with specific problems we are having with information. We didn't do this with the chairperson, but with the staff at the FTC, we talked about the specific problems that we are having. So I was a little bit mystified by their response to that question.

MS. SCHAKOWSKY. Well, I think we need to have some documentation that can be presented as part of the argument in this discussion of this legislation. And I think the burden really is on you. I agree with the chairman of the committee that on the face of it, the argument is very appealing to consumers, those who have run into the problems that Ms. Marzulla has talked about as consumers. You know, we need to have that information in hand, the anecdotal information I think is not, in and of itself, sufficient.

Thank you.

MR. STEARNS. Mr. Bass.

MR. BASS. Thanks, Mr. Chairman.

I just have one question.

If this bill is just about getting information, why shouldn't it just contain the following sentence, I am looking it up right now, which is on page 5, line 23: "No information necessary to repair a vehicle shall be held by a manufacturer if such information is provided directly or

indirectly to a franchised dealership or other repair facility." Why not limit the bill to that only?

MR. STEARNS. Who are you asking?

MR. BASS. I am going to ask it of all four. And I have got 7 minutes and 13 seconds left to get an answer.

MS. MARZULLA. I see I am first in line here, so I will grab the podium then.

I guess it could just say that. I mean, I think that is a fair rendition. I think the letter that was talked about by the chairman earlier, the September 20, 2002 letter in which the manufacturers, the Alliance, the AIAM, ASA put forward what they thought would be acceptable language, however, seemed to serve as a logical and good statement of a sort of wholesome way of approaching and solving the issue. And given that the Alliance itself had drafted it, it seems to me that that is a reasonable approach as well. But I think that you put your finger on the heart of the issue, the problem, which is that the information should be disclosed in a non-discriminatory fashion.

MR. BASS. Thank you.

Mr. Stanton.

MR. STANTON. Mr. Bass, that would make a bad bill a lot better.

MR. BASS. Thank you.

Mr. Lowe.

MR. LOWE. I think there is some relevance to look into that.

MR. BASS. Thank you.

Mr. Gorman.

MR. GORMAN. Yes, I would just like to say that there is direct information and there is indirect information, in other words the information required to build tools or security access and so on. As long as that would include indirect information to provide those--

MR. BASS. It says that in parentheses "directly or indirectly".

MR. GORMAN. Then I would--

MR. BASS. Thank you very much, Mr. Chairman.

I have no other questions.

MR. STEARNS. I thank the gentleman.

Ms. Baldwin.

MS. BALDWIN. I thank you, Mr. Chairman.

I, too, have a question that I would like to pose to all of the panelists.

The National Automobile Service Task Force formally reorganized itself in March. However, as we have heard, the organization has been in existence since 2000. And negotiations between the parties have had their high points and their low points. Please explain where NASTF stands in terms of self-regulation, and answer for me whether you believe there has been sufficient to allow this system to operate. And perhaps

how much time would be sufficient? How long should we give NASTF to settle into its role?

MS. MARZULLA. Unfortunately, I am not in a position to really comment on that directly. However, I will note that the first iteration of this bill was introduced, as I understand it, in 2001. That is my recollection. This issue, and this bill, at least a variation of this bill, has been pending for 5 years. It seems like quite a long time has elapsed since the issue was first raised, and I know the parties have been working diligently for 5 years, at least that is my understanding. But I will yield to those on the panel that can better speak to the issue.

MS. BALDWIN. Mr. Stanton.

MR. STANTON. Ms. Baldwin, thank you.

Yes, it is a complicated issue. And our industry is evolving very, very quickly. And it is kind of like a moving target as far as new technology is concerned. I am sure 5 years ago, some of the things like OnStar weren't even thought of that might be covered under this bill. We are very, very committed to NASTF. In the 2 months of the discussions, I think the thing that came out is that, by and large, manufacturers are providing all of the same service information. We make it available. But the new systems are complex. And each manufacturer has their own computer system. And what we found, really, what was needed was more information on how to navigate a manufacturers' system. So we want the information to be out there. We want our customers to be happy from the time they purchase the vehicle to the time that they sell it. So we would like to see it move as quickly as possible.

MR. LOWE. The problem with NASTF is it takes weeks and months to get an issue resolved. You, as an independent mechanic, have a car in the shop that day. You need to get it repaired. The problem is that there needs to be information out there the first time and not having minimized the complaints out there. The reason people don't go to NASTF and why they have so few complaints is that when you have that car, you don't have time to wait weeks and months. You have lost that car if you wait that long. So we need to move to put more teeth into this whole process in order to get the information process going, whether that is a non-legislative agreement or whether that is legalization. There needs to be teeth to make the system work.

MR. GORMAN. We have given ourselves a year, you know, from when we incorporate to get the structure in place, which includes, you know, the staffing and all of that. A lot of it will happen sooner than that, but our goal is to do this within a year and then also to have a sustainable funding source at the end of the first year.

MS. BALDWIN. Mr. Gorman, if I can follow up on that.

A year to just become fully functioning or a year to resolve the pending issues that have yet to be resolved?

MR. GORMAN. Well, you know, I can't really say whether we can resolve pending issues. We are trying to remain apolitical on this. There are missing associations on our board, and you know, so I can't say whether they will come back to the table or not. So those issues may always exist, but we do have a cross-section on our board, and we feel that we can put something together within a year that the industry can use.

MS. BALDWIN. And then for Ms. Marzulla.

You testified that automobile manufacturers are increasingly using technology to successfully lock out automobile owners from maintaining and repairing their vehicles. You go on to say that "lacking the ability to talk to the vehicles' computers, the owners or their technicians can not begin to diagnose, service, or repair modern vehicles". And I am sympathetic to this argument, as you heard in my opening statement, however, I am also a little confused, because one of the members of CARE is Auto Zone, is that correct?

MS. MARZULLA. Yes.

MS. BALDWIN. And I understand that they have a subsidiary ALLDATA advertising that its products and services offer "the information and solutions that technicians and shop owners need to efficiently repair vehicles and boost shop performance". So is that information available or not? I am just confused by that.

MS. MARZULLA. I think, again, to fully answer your question, I would like to be able to get back to you. But it is my understanding that some of the information is available from some of the manufacturers with respect to some of the components. But all of the information all of the time from all of the manufacturers is not available. If you would like me to follow up with more information that would directly respond to you about your specific question, I would be more than happy to do so.

MS. BALDWIN. I would appreciate that.

MR. STEARNS. Mr. Murphy.

MR. MURPHY. Thank you, Mr. Chairman.

As I was visiting some of my local independent auto repair dealers and car dealers, a couple scenarios came up, and I would like to describe it and then ask people to respond to it. One was the dealer independent repair technicians, they showed me a lot of the small computers and the devices they would attach to the cars to do the analysis. They said they could only fix certain models of cars with this particular computer. They couldn't fix everything. You had to have different parts and different systems for that. But one told a story where he was trying to replace and repair a driver's side power window in the vehicle. He could install the

window and the new motor, but it couldn't work, because he couldn't get the software needed to have the car recognize a new window was installed. It couldn't go through the system there. Does that sound like a kind of a problem that this is resolvable?

MR. STANTON. Mr. Murphy, from our point of view, it should be solvable. That tool should be made available. The manufacturers make the information available to ETI, but then they also sell their own diagnostic and scan tools. So I don't understand why a tool to fit that need would not be available.

MR. MURPHY. Anyone else?

MR. LOWE. Yes, I would like to comment on that.

A lot of the problems we have in our industry is that you do get all of the information to install a part, then you get down to the end and you can't get the code to get the car started again or to download the latest program onto it. So--

MR. MURPHY. Is that code issue the one that, Mr. Stanton, you referred to that is sometimes needed for security of the vehicle?

MR. STANTON. No, that is actually a different code. And it depends on who manufactures the tool as to whether or not the codes are there. If it is manufactured by an aftermarket manufacturer, they may freely, for competitive reasons, not include every code. If they buy a tool from the manufacturer, it will have the same codes that the dealers have.

MR. LOWE. Well, we disagree on that, but you know, I would say that in the cases, like if you replace a fuse, sometimes, you have to bring the car back to the dealer to get it reinitialized so that the car will start and all of the electronic parts on it will work again. So there are a lot of issues that are not necessarily available to the aftermarket in some cases, especially with some of the foreign car companies.

MR. MURPHY. Another example was that someone was taking care of a car that had been in an accident, and part was they got the things taken care of, including a new airbag, but the airbag was computer-controlled and until they got some other work done, the car did not recognize there was a new airbag there, and of course the people didn't want to have an airbag that had a light on it that says it was not working, it was not deployable. I think in some cases they talk about having to put the car on a flatbed, take it to a dealer, have them reset it, and then it is there, but it is a larger expense. Does that sound like a typical problem or is that atypical?

Mr. Lowe, do you want to comment?

MR. LOWE. I think that is a typical problem.

You know, I have a car. I had the same problem, and they had to get the dealer to help reinitialize the system again so that it would start. It was a Volkswagen.

MR. MURPHY. Mr. Stanton, are you saying that is not characteristic?

MR. STANTON. Well, it depends. If it has to do with the immobilizer and the immobilizer is attached to the vehicle's security system, that information, during all discussions, we do not think that information belongs out in the general public. But having said that, we are working very, very hard through the NASTF with the locksmiths, with the insurance community and with the law enforcement community to develop a secure system so that we can get that information out.

MR. LOWE. This is not a locksmith problem. This is a problem with diagnosing repairs and repairing cars. You can fix the key problem, but you can't necessarily fix the engine problem the same way, so while they are working to do that, they are not helping us out on the engine side.

MR. MURPHY. Thank you, Mr. Lowe.

Mr. Gorman, did you have a comment on that?

MR. GORMAN. Yes, in the case of the door panel, it is more of identifying a new part on the network. And if you have a factory tool, you could easily do that. And as we incorporate new capabilities into aftermarket tools, you would be able to do that, depending on, again, some obscure, you know, vehicle makes and so on. In the case of the SRS, in most cases, that can be done by an aftermarket tool, but there are situations where it would require a security, because it is tied to a security module, and that would be a problem. But we are working on those things.

MR. MURPHY. And Ms. Marzulla, did you have any comments on those issues?

MS. MARZULLA. No, I do not.

MR. MURPHY. Okay. I thank you, Mr. Chairman. That is all I have.

MR. STEARNS. The gentlelady from Tennessee.

MRS. BLACKBURN. Thank you, Mr. Chairman.

I want to go back, Ms. Marzulla, to you.

On quantifiable evidence, and I know Ms. Schakowsky was talking with you about this, and in November, we had a hearing in this same subcommittee and I asked at that time if any of the organizations had quantifiable evidence, and you know, we haven't seen it. But you referenced some statistics in your testimony. And I wanted to know, has CARE done any study that shows the number of incidents that the companies have experienced in the past year or even in the past 5 years? Yes or no. Have you?

MS. MARZULLA. I have referenced the statistics in my testimony, to my knowledge, that is--

MRS. BLACKBURN. Okay. I am going to stop you right there, because the statistics that you referenced in your testimony are not a CARE study. And you give some stats to highlight the problem. You

use an Auto Service Association survey from 2002. You do a parents group study from several years ago that show two million cars turned away, but there is nothing that quantifies your footnotes. I would like for you not to respond now. I would like for you to submit something in writing. You all are saying that there is this problem. The FTC doesn't see a problem. And, you know, I am just saying where is the issue. Mr. Lowe comes along and says that there have been problems in 74 percent of the repairs. You know, those are the things that we need in writing so that we have some documentation and we don't come back in here and have a lot of anecdotal, trying to get us to legislate on something that doesn't seem to be a problem.

So I would appreciate that.

Also, Ms. Marzulla, you argue that case law shows that the Supreme Court has traditionally supported the right of the consumer to repair a product that they purchased. And you gave some testimony on that fact. Are you currently addressing any situations in the court or not? Yes or no.

MS. MARZULLA. With respect to this issue?

MRS. BLACKBURN. Yes, ma'am.

MS. MARZULLA. No, I am not.

MRS. BLACKBURN. Okay. And would this legislation provide you a greater legal standing to pursue this in the courts or not?

MS. MARZULLA. I don't think so. I think my answer is no. And I just wanted to say, I would be happy to provide those statistics.

MRS. BLACKBURN. Very good. Thank you. I would like to see those.

I would like to ask you also about your member organizations, and Mr. Lowe, I am going to come to you with the same question on this.

I have talked to some of my tool and die manufacturing guys. And one of the things that we are concerned about is manufacturing that is moving to China. So what I would like to know is how much from your member organizations, and you all may submit this to me in writing, I don't want to vote for something that is going to send manufacturing to China and take it out of our manufacturing plants here. And what I am hearing from some of our guys is they think this might be a problem, that you are trying to get their IP to go manufacture these things over in China and then bring them back here, sell them at the same price with a greater markup and increase profits. So if that is not true, I want you to refute that. But again, I don't want this anecdotally. I would like to have this in writing. I want to know how much of your manufacturing occurs overseas or specifically in China as opposed to in the United States. And if this bill requires part specifications to be released and easily provides for reverse engineering, what will prevent this technology from getting

into the hands of the Chinese or those that would like to be off-pricing and knocking off these parts and moving it into our aftermarket parts manufacturers? We know that that creates a liability issue for many of our small business manufacturers.

Yes, sir. You may respond.

MR. LOWE. Okay. Thank you.

First of all, this bill does not provide any opportunity for us to get specifications for parts or blueprints or patents from the manufacturers. It doesn't expand that. I think the one thing that we agree with the manufacturers is that they don't want to provide us that information. We aren't asking for that information. If there is a difficulty in the language, we would be more than happy to work and resolve that.

MRS. BLACKBURN. Okay.

MR. LOWE. As far as your question regarding China, of the $81 billion of auto parts that are imported from--

MRS. BLACKBURN. How much again?

MR. LOWE. Eighty-one billion dollars.

MRS. BLACKBURN. Eighty-one billion dollars. Okay.

MR. LOWE. Of those that come into the United States from overseas, only about $4 billion come in from China.

MRS. BLACKBURN. Okay.

MR. LOWE. And that is ITC stats.

I don't see how this bill would provide any ability that would, you know, grow that in any way from China. This bill really only is directed at service information and tool information, not parts.

MRS. BLACKBURN. Thank you.

My time has expired.

MR. STEARNS. I thank the gentlelady.

We have completed our questions. I think I will just, on behalf of Chairman Barton who is not here, follow up with a question I think he would want to ask after the gentleman from New Hampshire, Mr. Bass, offered an abridgement of the bill in which he said that the whole bill would come down to "no information necessary to repair vehicles shall be withheld by a manufacturer if such information is provided directly or indirectly to a franchisee, dealership, or other repair facilities." And he asked each of you, if that was the bill, would you accept it, and so would you like to reiterate, for the chairman's benefit, particularly you, Mr. Stanton, do you think you and all of your members, if the bill H.R. 2048 came down to that one sentence, and of course there would be some, you know, boilerplate language dealing with enforcement, but if that was the gist of the bill, would you and your members accept it?

MR. STANTON. I think there are two points on that, Mr. Chairman. One is I really think that we ought to have federal legislation when it is

necessary, when it is called for. We don't think that there is a case here. The problems that are out there we are trying to address through the NASTF, and we would hate to see the start of a legislative process that, in the end of the day, might not end up the same way that it starts.

The second point is that we have argued all along that there does need to be a cut-out for vehicle security issues. This is extremely important. Motor vehicle theft has grown over time. This committee addressed it back in 1984 and then again in 1992. And these anti-theft devices that are proven to be effective in cutting motor vehicle theft, I don't think anyone wants that information out in the general domain. And the language that you were talking about would not have a carve-out for anti-theft devices, and we think that is critically important.

MR. STEARNS. Would anyone else like to answer?

MR. LOWE. I would like to respond to the anti-theft issue really quickly, because while the anti-theft issue, the immobilizer, is huge because it includes being able to diagnose problems. If a car can't start, it could also be due to the immobilizer system. But some manufacturers have been able to provide that information to our industry, such as Ford, and done it in a way that prevents theft of the car. And if Ford can do it, we don't understand why other manufacturers can't work on their systems. We offered in our compromise to say let us give a couple of years for them to develop and make sure that their systems can prevent theft but still make sure the information is out there. This is probably one of the biggest complaint areas we are getting from our members is they are having difficulty, when they finish the repairs, restarting the car or diagnosing some problems with the immobilizing system. It absolutely needs to be solved.

MR. STEARNS. Ms. Marzulla, Mr. Stanton's point is that sometimes this one-sentence legislation, as it goes through the process, changes dramatically and so forth. Even before you start legislation with one sentence, you would have to define what "information" means, because it says "no information necessary to repair a vehicle shall be withheld". Can you, here today, tell me what the definition of that word "information" is? I mean, do you feel comfortable with a good definition? Could you give it to me?

MS. MARZULLA. I don't know that off the top of my head. I can give you a complete definition. I think that was one of the reasons why the drafters of the bill had the wisdom to suggest that FTC might promulgate regulations that would flush out some of these definitions, but I would suspect that we all understand that we are talking about the information necessary to allow the computers' replacement part to talk to the system in which the part would be placed or that would allow a technician to diagnose and be able to complete the repairs in the cars. I

think it boils down to something that simple, and I think that was the beauty, a simple, elegant solution that was suggested. The one addition I might add to that, however, is that there be explicit protections for the intellectual property rights of the manufacturers. I think that is an important component. And Mr. Stanton, I am surprised you didn't call for that yourself, but I certainly think that that would be something that would need to be in the legislation.

MR. STEARNS. Mr. Stanton, you know, the question I asked from Ms. Marzulla about defining "information", do you feel that "information" can be defined? I mean, with you and all your members, is that word "information" pretty much clearly understood?

MR. STANTON. No, sir; it is not. That has been one of the problems. As our industry moves forward, information today, and this is one of the things we have struggled with. For example, I used this before, but I think since 2004, under the GM OnStar program, you can sign up, and they will actually track the information that you need and give you the information when you are due for an oil change, for an example. That is information. That is repair information. Would that be covered? Would that not be covered? And then look in 2008 and what the technology that is coming down the road and what will be implemented into the new vehicles, I don't know if we know enough today to define the word "information" satisfactorily.

MR. STEARNS. But in 2002, the 35 automakers signed an agreement where the word "information" was used, Mr. Stanton. So I see it in the agreement. It is right here. And evidently, you signed this agreement, and it has service information, training information, diagnostic tools, and to the same extent. So--

MR. STANTON. And that was a big qualifier. And that letter was not easy to come by, too, Mr. Chairman.

MR. STEARNS. But it would admit that you have signed on to some understanding of what "information" met in this.

MR. STANTON. Absolutely. And I want to assure the committee that our members want the information out there. That is not the issue. We want it out there, and there are qualifiers in there, which is really the same information that we give to the dealer or make available to the dealer as well. And when we had our discussions back in August and September, that fell off the table almost immediately as long as we put the litmus test there that said if we make it available to our dealers, we are more than willing to make it available to the aftermarket. And we will still stand by that.

MR. STEARNS. All right.

Mr. Gorman, do you want to have the last word or Ms. Schakowsky?

Yes, Ms. Schakowsky.

MS. SCHAKOWSKY. If we could just put that agreement into the record, if we could get unanimous consent.

MR. STEARNS. Yes, by unanimous consent, I will put this agreement that was signed into the record.

[The information follows:]

Direct Reply To: Robert L. Redding, Jr., Washington Representative
313 Massachusetts Avenue, N.E., Washington, D.C. 20002, (202) 543-1440, Fax (202) 543-4575

AUTOMOTIVE SERVICE ASSOCIATION®
Street Address:1901 Airport Freeway, Bedford, Texas 76021-5732
Mailing Address: P.O. Box 929, Bedford, Texas 76095-0929, (800) 272-7467, Fax (817) 685-0225
E-mail: asainfo@asashop.org • Internet: http://www.asashop.org

September 26, 2002

The Honorable Joe Barton
U.S. House of Representatives
Washington, D.C. 20510

Dear Representative Barton:

The Automotive Service Association (ASA) thanks you for your introduction of H.R. 2735, the Motor Vehicle Owners Right to Repair Act. As you know, the bill acquired fifty co-sponsors in the U.S. House of Representatives. Without your efforts, the service information issue would not have achieved a national spotlight.

This industry issue, sorely impacting consumers, had little chance of resolution without congressional review. Although the bill did not become law, H.R. 2735 gave us the opportunity to settle this issue within the industry.

On July 30 the companion Senate bill, S.B. 2617, was addressed in a hearing of the Senate Commerce Committee's Subcommittee on Consumer Affairs, Foreign Commerce and Tourism. Subcommittee Chairman Byron Dorgan challenged the hearing's participants to discuss how the issues addressed in the legislation could be resolved without Congress taking further action. Chairman Dorgan assured the participants that the Committee would act if there was no industry resolution.

We are pleased to report to you that ASA has reached an agreement with the vehicle manufacturers that we believe assures independent repairers a viable future in the automotive marketplace. We are hopeful for the agreement's success. Knowing of your interest in this issue, we will report back to you periodically about the progress of the agreement.

Again, thank you for your leadership and your commitment to the automotive aftermarket. Without your leadership, we could not have achieved this historical accord.

Sincerely,

Robert L. Redding, Jr.

September 20, 2002

The Honorable Byron Dorgan
Chairman
Subcommittee on Consumer Affairs, Foreign Commerce and Tourism
U.S. Senate Commerce, Science, and Transportation Committee
Washington, D.C. 20510

Dear Chairman Dorgan:

As the Subcommittee requested, our associations have discussed the issues reviewed at the Subcommittee's July 30, 2002 hearing on Customer Choice in Automotive Repair Shops (S. 2617). We believe the following commitments by automakers will provide independent repairers the necessary service information and diagnostic tools to compete and serve consumers in the marketplace.

The members of the Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers listed below fully support the following:

Automobile manufacturers hereby commit to make available, by August 31, 2003, emission and non-emission-related service information, training information, and diagnostic tools in the same manner and to the same extent as specified by California Air Resources Board (CARB) regulations for emission-related systems and components. This means that 1) the same service and training information related to vehicle repair will be made available to independent repair shops either via the Internet, or in the same manner and extent as it is made available to franchised dealerships and 2) the same diagnostic tools related to vehicle repair that are made available to the franchised dealers will be made available to the independent repair shops. These will be made available at a reasonable price consistent with the guidelines provided in CARB regulations. The service and training information and manufacturer tools will be available to independent repair shops without the need for them to return to a franchised dealership (to the extent allowed by law).

This commitment will continue the viability of the automotive service industry and preclude the need for current legislation while we work on implementation. Moreover, successful implementation will eliminate the need for future state and federal legislation.

The Honorable Byron Dorgan
Page 2

Manufacturers recognize the value of third-party providers of tools, service and training information and are committed to making available to information providers and tool companies the service and training information, tools and tool information. The National Automotive Service Task Force will continue to provide a forum for industry and aftermarket to resolve service information issues. We ask that the Subcommittee and its staff periodically review the progress being made toward the objectives above.

We believe this continues a long tradition of the independent repairer's important position in the automotive industry. It also demonstrates our mutual commitment to fair and open competition in the auto service industry and to consumer choice in seeking these services. Please feel free to call on our organizations if you have any questions.

Sincerely,

Josephine S. Cooper
President & CEO
Alliance of Automobile Manufacturers, Inc.

Timothy C. MacCarthy
President & CEO
Association of International Automobile Manufacturers, Inc.

Dan Frohlich
Chairman
Automotive Service Association

Automobile Makes:

Acura	*Hyundai*	*Mitsubishi*
Aston-Martin	*Infiniti*	*Nissan*
Audi	*Isuzu*	*Oldsmobile*
BMW	*Jaguar*	*Pontiac*
Buick	*Jeep*	*Saab*
Cadillac	*Kia*	*Saturn*
Chevrolet	*Land Rover*	*Subaru*
Chrysler	*Lexus*	*Suzuki*
Dodge	*Lincoln*	*Toyota*
Ford	*Mazda*	*Volvo*
GMC	*Mercedes-Benz*	*Volkswagen*
Honda	*Mercury*	

MR. STEARNS. Mr. Gorman, we are going to close here, and I--

MR. GORMAN. Yes. Without taking a position on the bill itself, there is a definition that already exists within the Clean Air Act, 40 CFR, I believe.

MR. STEARNS. So that everybody could understand what "information" means.

MR. GORMAN. Yes. It is a little old and may need to be revisited, but it does exist. And I believe the Dorgan letter refers to CARB regulations, which also has the definition.

MR. STEARNS. Okay. With that, we will end the subcommittee, and I thank the second panel.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned.]

RESPONSE FOR THE RECORD BY AARON LOWE, VICE PRESIDENT, GOVERNMENT AFFAIRS, AUTOMOTIVE AFTERMARKET INDUSTRY ASSOCIATION

June 21, 2006

The Honorable Cliff Stearns
Chairman, Subcommittee on Commerce, Trade, and Consumer Protection
2125 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Stearns:

Enclosed, please find my responses to questions that were directed to me by a Member of the Committee as a result of the May 17, 2006 hearing before the Subcommittee on HR 2048, The Motor Vehicle Owners' Right to Repair Act of 2005.

Please feel free to contact me should you have any additional questions or need any clarification regarding my responses.

Sincerely,

Aaron M. Lowe
Vice President
Government Affairs

Responses from Aaron Lowe, Vice President to Government Affairs for the Automotive Aftermarket Industry Association (AAIA) to questions from the Honorable Joseph R. Pitts:

1. *Can you tell me a little about the CARE that supports this legislation? It's my understanding that it is made up largely of Fortune 500 parts distributors and their local distribution and service outlets, not independent repairers. Is that correct?*

Response:

Since the Coalition for Auto Repair Equality (CARE) was represented as a witness at the hearing, we feel that it is more appropriate that this question be directed to CARE for response. While AAIA and CARE share some members, we are separate organizations that support passage of Right to Repair. In addition to CARE and AAIA, the coalition supporting passage of Right to Repair legislation is composed of a large number of organizations representing independent repair shops. This includes the Service Station Dealers of America with 10,000 independent repair shops; Alliance of Automotive Service Providers with 7,000 independent repair shops, Tire Industry Association with 40,000 shops, National Federation of Independent Businesses that represents 24,700 independent repair shops, and AAA with 7,000 approved auto care facilities.

2. *Do you represent independent repairers or parts distributors? How many independent repair shop owners sit on your AAIA or the CARE Board of Directors? How many Fortune 500 companies sit on CARE's Board of Directors?*

Response:

AAIA is comprised of virtually every segment of the vehicle aftermarket including manufacturers, distributors, retailers and installers of automotive parts and accessories. Our membership is further comprised of large, medium and small businesses. Independent service facilities have their own segment under the AAIA umbrella called the Car Care Professional Network. This segment represents the interests of 70,000 independent service and repair shops around the country. The governing board for CCPN is composed of independent repair shop owners, state groups representing service facility owners, technician training organizations and other groups that serve this industry.

Again, we urge that you direct any specific questions regarding the composition of CARE or its leadership to that organization.

RESPONSE FOR THE RECORD BY MICHAEL J. STANTON, VICE PRESIDENT, GOVERNMENT AND INTERNATIONAL AFFAIRS, THE ALLIANCE FOR AUTOMOBILE MANUFACTURERS

Mr. Michael J. Stanton
Vice President, Government and International Affairs
The Alliance of Automobile Manufacturers
May 17, 2006
Subcommittee on Commerce, Trade, and Consumer Protection Hearing on:
H.R. 2048, The Motor Vehicle Owners' Right to Repair Act of 2005

Questions from the Honorable Joseph R. Pitts

1. I understand that previous versions of this legislation explicitly called for a new private right of action for every car owner and repair shop in America. Is there anything in the latest version that prohibits private rights for action? I see where the findings talk about manufacturers restricting access? Do you believe that is the case? Is there a risk that these findings could be used by the trial bar to open up the doors to the courthouse through state deceptive trade practices suits?

The Alliance of Automobile Manufacturers has been very concerned about the "findings" provision of H.R. 2048. The findings are factually inaccurate in many cases and unfair to the vehicle manufacturers that have made significant efforts to provide service information and tools to the independent service provider sector.

The question identifies a good example. Contrary to the "finding" regarding the alleged restriction of access to information, the record shows that service information and tools are generally available to the independent service provider sector, and that auto manufacturers have made great strides in meeting the information needs of the independent service providers. The Alliance has been concerned that these baseless findings unreasonably increase the risk of litigation against the manufacturers by consumers, independent garages or others.

During the recent Subcommittee markup, the "findings" were deleted, and a new provision was added, expressly stating that the bill does not give rise to a private right of action. While these were helpful steps in addressing the risk of private litigation arising directly from this legislation, it does not address all of the litigation risks the Alliance has previously identified. For example, the legislation expressly preserves the right of a State attorney general to proceed against automobile manufacturers under state consumer protection laws, <u>even if</u> the action is premised on an alleged violation of the "duty to disclose" newly created by the Federal legislation. And, the legislation does not preempt the states from enacting mirror-image laws that could give rise to private lawsuits.

SUBMISSION FOR THE RECORD BY THE HONORABLE DEBORAH PLATT MAJORAS, CHAIRMAN, FEDERAL TRADE COMMISSION

THE CHAIRMAN

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

June 12, 2006

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
2328 Rayburn House Office Building
Washington, DC 20515

Dear Ranking Member Dingell:

On May 17, 2006, I testified before the Subcommittee on Commerce, Trade, and Consumer Protection regarding H.R. 2048, The Motor Vehicle Owner's Right to Repair Act of 2005. At that hearing you requested a report enumerating any complaints that the Federal Trade Commission ("FTC" or "Commission") had received regarding this issue.

In response to your request, Commission staff conducted an automated search of the more than four million complaints in the FTC's Consumer Information System ("CIS").[1] Between January 1, 1996 and May 16, 2006, the Commission received 6,786 complaints relating to auto parts and repairs. Staff then conducted two separate searches of these complaints. First, staff searched the comment field of the auto repair complaints for the following key words and/or phrases, and their variations: "information, repair, repair information, could not repair, makes repair, manuals, manufacture, parts, equipment, independent, tools, instruction, and/or training" to ascertain which of these complaints related to consumers' or independent auto repair shops' difficulty in acquiring either needed tools or information. Using this methodology, we found two relevant complaints.

Second, we produced a random sample of 200 complaints from the 6,786 auto repair complaints. We analyzed the comment field of those complaints and found none relating to the inability of consumers or independent auto repair shops to acquire the equipment needed to repair cars, or to access information required to make timely repairs. These survey results allow us to report with a 95% confidence level that there are 100 or fewer such complaints in the system.

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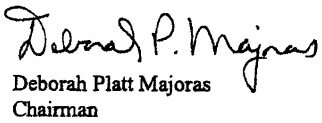
[1] CIS is a computer application that provides a central repository for information related to complaints from consumers about the practices of businesses across the United States and, in some instances, other countries. Much of the complaint information is available to other federal, state, local, and international law enforcement agencies to use in specific investigations and to identify and track trends affecting the marketplace.

Hon. John D. Dingell
June 12, 2006
Page 2

In assessing these results, it is important to note that individual consumers may not necessarily complain to the FTC about auto repair issues. Consumers may be more likely to complain to their local Attorneys General, the Better Business Bureau, or other organizations. For example, auto repair complaints, as a general category, are consistently on the National Association of Consumer Agency Administrators' top ten complaint list.

Please let me know if you have any further questions regarding this matter.

Sincerely,



Deborah Platt Majoras
Chairman

cc: Hon. Joe Barton, Chairman
Committee on Energy and Commerce

Hon. Cliff Stearns, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

Hon. Janice D. Schakowsky, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

SUBMISSION FOR THE RECORD BY GARY SHAPIRO, PRESIDENT AND CEO, CONSUMER ELECTRONICS ASSOCIATION

Consumer Electronics Association 2500 Wilson Blvd. Arlington, VA 22201-3834 USA (703) 907-7600 main (703) 907-7601 fax www.CE.org

May 16, 2006

Dear Representative:

I am writing to urge your support for H.R. 2048, the Motor Vehicle Owners Right to Repair Act introduced by Representative Joe Barton last year.

The Consumer Electronics Association has more than 2,100 members, many whom manufacture or install aftermarket mobile electronics products, such as car audio systems, in-dash navigation systems, televisions, DVD players, security alarms, satellite radio, and Bluetooth systems.

In recent years, automobiles have become increasingly advanced, relying heavily on computers and electronics for nearly all aspects of a vehicles' operation. These developments have led automobile manufacturers to implement access codes, which have the effect of locking aftermarket installers and products out of new vehicles.

CEA believes Americans should have the right to choose which new technologies are used in their vehicle, as well as the right to choose who installs these products.

We are not asking manufacturers to divulge any proprietary information. Rather, we ask them only for the bare minimum information needed for aftermarket manufacturers and independent repair shops to compete in the marketplace. H.R. 2048 offers the necessary protections for automobile companies' trade secrets and patents.

Aftermarket installers and mobile electronics manufacturers deserve the opportunity to compete with new car dealers, who now use these access codes to lock out their competitors. Greater consumer choice and competition will drive more innovative products and lower prices, benefiting all Americans.

We urge you to join the 102 members of Congress currently supporting the Motor Vehicle Owners Right to Repair Act as a way to promote greater consumer choice, lower prices and a fair chance to compete for mobile electronics installers and manufacturers.

Sincerely,

Gary Shapiro
President and CEO

PRODUCER OF CES

SUBMISSION FOR THE RECORD BY PAUL T. KELLY, SENIOR VICE PRESIDENT, FEDERAL AND STATE GOVERNMENTAL AFFAIRS, RETAIL INDUSTRY LEADERS ASSOCIATION

RETAIL INDUSTRY LEADERS ASSOCIATION
Retail's Future...Educate, Innovate, Advocate

1700 N. Moore Street, Suite 2250, Arlington, VA 22209
Phone: 703-841-2300 Fax: 703-841-1184
Email: info@retail-leaders.org www.retail-leaders.org

Statement In Support of H.R. 2048 the "Motor Vehicle Owners' Right to Repair Act"

Submitted for the Hearing Record

Subcommittee on Commerce, Trade, and Consumer Protection
House Committee on Energy and Commerce
May 17, 2006
2123 Rayburn House Office Building

Dear Chairman Stearns:

On behalf of the Retail Industry Leaders Association (RILA), I am writing in support H.R. 2048, the "Motor Vehicle Owners' Right to Repair Act." This important legislation improves consumer choices and protects the rights of ordinary Americans who enjoy performing maintenance on their own automobiles. We appreciate that you have scheduled today's hearing to consider this important issue, and urge you to support, and schedule a vote on, H.R.2048 in this session of Congress. RILA has written the committee urging passage of this measure in each of the last three years, and hopes that the bill will finally be approved by the House in this session of Congress, with enough time to spare to provide an opportunity for action in the Senate and conference committee negotiations.

Retail Industry Leaders Association (RILA) is a trade association of the largest and fastest growing companies in the retail industry. Its member companies include over 400 retailers, product manufacturers, and service suppliers, which together account for over $1.4 trillion in annual sales. RILA members operate over 100,000 stores, manufacturing facilities and distribution centers, have facilities in all 50 states, and provide millions of jobs domestically and worldwide. The leadership of RILA's Board of Directors includes some the world's leading retail companies, including Best Buy Co., Inc., Wal-Mart Stores, Inc., Target Corp., Lowes, Inc., and other top retailers, as well as consumer product manufacturing companies, such as Proctor & Gamble, Unilever, and Johnson & Johnson.

While current automobile technology undoubtedly provides many benefits to consumers, we understand that the inaccessibility of information related to those technologies is preventing car owners from repairing and maintaining their own vehicles. It may also be preventing them from choosing their own auto mechanic or the parts needed to make repairs. Currently, only automobile manufacturers and their dealers – not independent repair shops or owners themselves – have complete access to all of the information that is needed to make repairs and perform maintenance.

We believe it is unfair to deny consumers access to information about the products they purchase. In order to make informed decisions, consumers ought to be provided with as much information as possible about the

products that they wish to purchase, including information about the proper care and maintenance of automobiles.

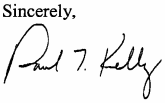
That is why we support H.R. 2048, legislation that would require an automobile manufacturer to disclose to the vehicle owner -- or to the repair shop that they choose -- the information necessary to diagnose, service, or repair their vehicle. We believe that when a consumer purchases an automobile, they have a right to expect that they own not just the vehicle, but also the information necessary to properly maintain or restore their property.

Several of our retail member companies carry automobile aftermarket products, including AutoZone, Inc., CSK Auto Corp., PEPBOYS AUTO, as well as general retailers Wal-Mart Stores Inc., Sears Holdings Corp., and others. This legislation would directly benefit millions of customers who shop at those retailers every year by improving their ability to perform routine maintenance on their automobiles.

Finally, RILA also support the bill because it embodies an important principal embraced by our entire membership – that government policies should promote free market competition by enhancing consumer choice and expanding consumer access to price competitive merchandise. We hope the committee

Again, we thank you for holding this important hearing, and ask that you support passage of H.R. 2048 in this session of Congress. If you have any questions about this matter, or any other aspect of RILA's government affairs program, please don't hesitate to contact me.

Sincerely,



Paul T. Kelly
Senior Vice President
Federal and State Government Affairs