March 2, 2018

The Honorable John Thune, Chairman
The Honorable Bill Nelson, Ranking Member
Senate Committee on Commerce, Science, and Transportation
Washington, DC 20510

RE: Lack of consumer protection in AV START from forced arbitration clauses

Dear Chairman Thune and Ranking Member Nelson:

We the undersigned, on behalf of the members of each of our groups individually, and all drivers nationwide, write today about a vital consumer protection that should be a part of the AV START Act (S. 1885) – protection from forced arbitration clauses.

Car makers say autonomous vehicles (AVs) promise a future absent of driver and pedestrian fatalities, cars without steering wheels or brakes, and commutes lacking stress or traffic. Yet, those of us who are focused on consumer safety and rights have at least one more "freedom" to add to this list: AVs should be free of forced arbitration clauses.

An existing clause in the bill, Section 3, prohibits the preemption of existing state common law and statutory law. This provision should act to protect the rights of consumers if something were to go horrifically wrong due to the design of these futuristic machines. However, at a time when so much is unknown about the safety performance of these vehicles in the real world, there is no provision which prohibits the inclusion of a mandatory arbitration clause into a contract to purchase or lease an AV.

As you know, forced arbitration contract terms require consumers to adjudicate claims in forums that do not have the protections of the legal system—the rules of evidence and

discovery do not apply, there is no requirement that arbitrators follow the law, there are no juries, and there is little to no opportunity for witness depositions. Moreover, arbitration proceedings are secretive, and the findings of arbitrators are seldom appealable. And, because arbitration firms rely on repeat customers for their profits, it is unlikely that arbitrators will find for a consumer over the corporation likely to provide additional business in the future.

The potential for inserting forced arbitration clauses into a contract between a manufacturer and an individual consumer is ever present and abets an alternate system of justice when the inevitable defects in new technology occur. Such a result would create yet another incentive for unscrupulous manufacturers to put shareholders' interests ahead of safety concerns.

Unfortunately, as safety advocates we have seen this scenario play out before with consumers and cars. One of the most recent examples has been in the context of lemon laws. It was a difficult fight to see every state and the District of Columbia enact statutes protecting consumers if they happen to purchase a defective automobile, commonly known as a "lemon." If a consumer can show that the car he or she bought is defective and the manufacturer fails to honor the warranty and repair the defect - lemon laws assist that consumer in getting fairly compensated in order to get a new, working, vehicle. Few would dispute that, under both federal and state laws, consumers have the right to go to court to enforce their warranty rights, particularly in such a situation. In states where arbitration is required, it must be non-binding in order to preserve the consumer's right to trial.

Despite these legal protections, for years now the auto industry has been emboldened by the intrusion of forced arbitration in other fields. As a result, it is all too common for consumers to be deprived of their federal and state rights by sales conditioned on acceptance of forced arbitration as a means to resolve disputes. We have long believed that when a company makes a defective vehicle, they should use their engineers to build a better vehicle, and not their lawyers to find a legal loophole to avoid responsibility. To be clear, forced arbitration has no place in the sale or purchase of automobiles, be they used or new, human driven or autonomous.

Arbitration, when voluntarily consented to by both parties post-dispute can be an adequate dispute resolution mechanism. Yet, the use of pre-dispute binding arbitration clauses continues to proliferate. Some have suggested that self-driving vehicles may be purchased directly by consumers from multi-national manufacturers, creating an even greater power imbalance than when buying from your local dealership, potentially enabling manufacturers to insert forced arbitration provisions directly into consumer sales contracts. This moment presents an opportunity to ensure that a practice designed to deprive consumers of their constitutional rights not be allowed to continue into the next generation of vehicles. Importantly, there is precedent in the area of forced arbitration and cars:15 U.S.C. § 1226, the Motor Vehicle Franchise Contract Dispute Resolution Process Act. Passed into law in 2002, this law prevents auto manufacturers from forcing arbitration clauses on their franchisees. Consumers deserve the same rights when it comes to driverless vehicles.

Thank you for your attention to this important matter,

Jason Levine, Executive Director
Center for Auto Safety

Jack Gillis, Director Public Affairs
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Paul Bland, Executive Director
Public Justice

Edmund Mierzwinski, Senior Director,
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