



April 1, 2019

Chairman Roger Wicker  
U.S. Senate Committee on Commerce,  
Science, and Transportation  
512 Dirksen Senate Building  
Washington, DC 20510

Ranking Member Maria Cantwell  
U.S. Senate Committee on Commerce,  
Science, and Transportation  
425 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Wicker and Ranking Member Cantwell:

The Center for Auto Safety (“the Center”) submits the following letter in connection with the scheduled Committee vote on the nomination of Deputy Administrator Heidi King of the National Highway Traffic Safety Administration (NHTSA) for the position of Administrator. Ms. King has held the Deputy Administrator position for a year-and-a-half, and her actions, or lack thereof, have raised serious questions regarding this nominee’s ability to direct NHTSA as a safety and enforcement agency. The Center, founded in 1970, is an independent, non-profit consumer advocacy organization dedicated to improving vehicle safety, quality, and fuel economy not only for our members, but all drivers, passengers, and pedestrians across the country. On behalf of those members, and all individuals nationwide who depend on NHTSA to ensure the safety of our nation’s vehicles, the Center writes today to express our opposition to the confirmation of this nominee.

1. Rulemakings

NHTSA’s responsibility for promulgating rules and regulations to maintain the safety of the American people is one of its most important authorities and duties. Currently there are many regulations that are required to be written by law which NHTSA has refused to promulgate. Under Deputy Administrator King, rules that Congress mandated in order to protect children, inform consumers of recalls, and provide predictability and fairness in the marketplace have been continuously delayed and ignored. To name only a few:

- NHTSA was required by Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), which was signed into law in 2012, to issue a rule by October 1, 2015 providing requirements for improved Child LATCH Restraint Systems, in order to protect our most vulnerable citizens in cars and light trucks – infant children. Since issuing the NPRM in January 2015, NHTSA has provided no target date for further action.
- NHTSA was required by MAP-21 to issue a final rule by October 1, 2014 providing requirements for how Child Restraint Systems must perform when

involved in a side impact crash. The NPRM was issued in January 2014. Under King, NHTSA previously estimated that the rule would be complete by October 2018, but has now pushed that estimate to September 2019. NHTSA is also similarly delaying requirements for Child Restraint systems in frontal impact crashes. Given these delays, even the most optimistic estimate does not put improved child seats on American roads within a decade of the improvement mandate.

- NHTSA was required by MAP-21 to issue a rule by October 1, 2015 providing requirements for all new vehicles to have Reminders for Rear Seat Passengers to put on Seat Belts. Almost 1,000 people die every year in crashes in the back seat of cars and light trucks because they are not wearing their seatbelts. Under Deputy Administrator King, NHTSA has not even initiated rulemaking, and continues to push back publication of a proposed rule requiring minimal technology that is already available in front seats.
- NHTSA was required by the Fixing America's Surface Transportation Act (FAST) Act, signed into law in 2015, to issue a rule by August 29, 2016 providing requirements for how auto manufacturers must use electronic means to notify consumers of Vehicle Safety Recalls. With as many as 70 million open recalls on the road,<sup>1</sup> including 25 million or more deadly Takata airbag inflators remaining in circulation, this rule would actively assist in increasing recall completion rates and, if done quickly enough, could save lives. Since issuing an NPRM in August 2016, NHTSA has provided no target date for further action. While NHTSA continues to hold meetings with industry on recall notification, no action has been taken by the agency under King that would require manufacturers contact owners using any means in addition to postal mail.

The continued blatant disregard under Deputy Administrator King for the lawful mandates passed by the United States Congress raises serious concerns over how she will respond to Congressional oversight or how the agency under her leadership will deliver on NHTSA's core safety missions to the American people.

## 2. Autonomous Vehicles

During King's tenure as Deputy Administrator, there have been multiple incidents involving what is commonly referred to as "autonomous vehicle technology," or "self-driving cars." Some of these incidents have resulted in deaths and injuries of pedestrians (an Uber vehicle striking and killing a pedestrian in Tempe, Arizona) and drivers (multiple Tesla drivers killed with vehicle in "autopilot" mode). Under King, NHTSA has done nothing but cheerlead for industry even as incidents pile up and new questions arise about the complete lack of federal standards or oversight required to protect our citizenry from being used as guinea pigs in a corporate product development experiment.<sup>2</sup>

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<sup>1</sup> Consumer Federation of America, *Over 70 million vehicles on the road with open recalls*, September 18, 2018, at [https://consumerfed.org/press\\_release/over-70-million-vehicles-on-the-road-with-open-recalls/](https://consumerfed.org/press_release/over-70-million-vehicles-on-the-road-with-open-recalls/)

<sup>2</sup> Christopher Mims, *In Self-Driving-Car Road Test, We Are the Guinea Pigs*, Wall Street Journal, May 14, 2018, at: <https://www.wsj.com/articles/in-self-driving-car-road-test-we-are-the-guinea-pigs-1526212802>

Instead of looking for ways to protect Americans, and ensure the safe development of potentially groundbreaking technology, over the last eighteen months there have been nothing but multiple open comment periods<sup>3</sup> attempting to identify and eliminate regulations that might slow down universal deployment of still unproven robot-cars. One of the few oversight actions taken since Deputy Administrator King has been in office is to make the very limited set of voluntary guidelines for manufacturers to follow when testing self-driving cars – even less specific and even more voluntary. The only regulation that the Deputy Administrator has tried to move through in this area is currently under review by OMB and is titled: “Removing Regulatory Barriers for Automated Driving Systems.”<sup>4</sup>

The current NHTSA leadership even seems to object to fully gathering facts and data before moving forward with considering exemptions from federal motor vehicle safety standards when it comes to driverless cars. On December 26, 2018, NHTSA published a Final Rule in the Federal Register amending the regulation on temporary exemptions from the FMVSS and bumper standards to eliminate the requirement that the Agency determine a petition is complete before publishing a notice and seeking public comment about a request for exemption.<sup>5</sup> Not only does this rule directly contravene NHTSA regulations for taking comments on matters of public interest,<sup>6</sup> the action itself is contrary to public interest as it deprives the public of the opportunity to thoroughly review issues of great importance to safety.<sup>7</sup> It also significantly imperils road users by permitting the agency to publish incomplete applications for exemptions from critical federal safety standards that have saved countless lives.

The NHTSA Administrator must stand for safety first.

### 3. The Air We Breathe (Corporate Average Fuel Economy (CAFE) standards)

One of the roles of the NHTSA Administrator which affects the lives of every human being in the United States, and to a lesser extent, the world, is setting fuel economy standards for passenger vehicles. In addition to setting those standards, NHTSA also has the authority to enforce those standards by levying fines against auto companies that violate the rules. Under Deputy Administrator King, NHTSA has neither acted to protect the environment by maintaining the consensus standards set over a multi-year negotiation

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<sup>3</sup> Public Meeting - Voluntary Safety Assessments, October 20, 2017;  
Automated Driving Systems 2.0: A Vision for Safety Public Meeting, November 6, 2017;  
Removing Regulatory Barriers for Vehicles With Automated Driving Systems, January 18, 2018;  
Preparing for the Future of Transportation: Automated Vehicles 3.0, October 9, 2018;  
Pilot Program for Collaborative Research on Motor Vehicles with High or Full Driving Automation,  
October 10, 2018.

<sup>4</sup> See RIN 2127-AM00.

<sup>5</sup> 83 F.R. 66158 (Dec. 26, 2018).

<sup>6</sup> 80 F.R. 36487 (Jun. 25, 2015).

<sup>7</sup> Lives Saved by Vehicle Safety Technologies and Associated Federal Motor Vehicle Safety Standards, 1960 to 2012: Passenger Cars and LTVs, NHTSA, Jan. 2015, DOT HS 812 069.

process, resulting in the current CAFE standards, nor has NHTSA acted in consumers' best interest to save money at the gas pump.

In fact, Deputy Administrator King is an architect of the proposed rollback of the MY 2017-2025 standards, a proposal which could increase oil consumption by as much as 206 billion gallons of gasoline between 2020-2050, and will prevent states from setting their own emissions standards. The proposed rollback relied on faulty logic, bad math, and erroneous modeling. NHTSA's analysis of the safety impact of rolling back the standard has been roundly criticized for its faulty assumptions and lack of basic economic consistency.<sup>8</sup> When EPA expert staff expressed concerns over the rulemaking analysis, Ms. King and NHTSA failed to address these concerns.

The importance of these standards to the public is tremendous, and not only with respect to the air we breathe. Consumers can expect to save between \$3,200-\$4,800 over the lifetime of a new vehicle meeting the standards, even at low gas prices. Gas prices are rising on almost a daily basis. They are currently approaching a three-year high and they are expected to continue to rise. Savings from the existing CAFE standards are estimated to be up to \$8,200 per vehicle to consumers.

These efforts to ignore NHTSA's statutory obligation to set the "maximum feasible" standard for each model year highlight the concerns that all Senators should have with this nomination. Rolling back CAFE standards not only will put the American auto industry behind in the global market, where many of our largest competitors, like China and India, are moving forward with more stringent standards, it is an insult to the American automaker's ability to adopt new technology to meet the challenges of a new world.

The essence of the responsibility of the NHTSA administrator is to respect scientific findings and use them to protect Americans. The occupant of this position is charged with implementing CAFE standards, the biggest single step any nation has taken against global warming. Ms. King's evasiveness at her confirmation hearing in the 115<sup>th</sup> Congress when asked whether climate change is real and needs to be addressed is an unacceptable position for a data-driven, fact-based NHTSA Administrator nominee.

#### 4. Resource Allocation

Under Ms. King's leadership, NHTSA continues to tell the world that safety a priority, yet when given a chance to make pro-safety decisions about the allocation of appropriated funds it is all talk and no action. NHTSA's budget requests under the nominee continue to be in line with the larger DOT philosophy of promising safety but cutting areas that could deliver on those promises.

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<sup>8</sup> Charmley, W. 2018. *Summary points from EPA review of CAFE model (NPRM version) – Effect of EPA code revisions*. Presentation to Office of Management and Budget / OIRA, June 18, 2018. Document # EPA-HQ-OAR-2018-0283-0453, Attachment 5.

The Fiscal Year (FY) 2020 budget request again seeks to significantly decrease funding to the areas of the agency that are the most likely to deliver safety results to the American people. For example, in FY 2019, NHTSA's enacted appropriation for "Vehicle Safety Programs," (which are the heart of the agency) was \$190,00,000. For FY 2020,<sup>9</sup> the request was reduced to \$151,000,000 for this vital program – a 20% decrease in funding.

Among the areas that the current leadership of NHTSA would seek to underfund include the Rulemaking, Enforcement, and Research and Analysis departments. These departments have been integrally involved in creating vehicle crashworthiness and other safety standards that have saved millions of lives. Smart, targeted regulations make a real difference when it comes to safety in our cars and on our roads, but writing such standards require resources, personnel, and an Administrator who wants to deliver safety.

While more funding alone will not make any safety agency function perfectly, the ability for NHTSA to realize its full potential to save lives, prevent injuries, and reduce the economic burdens we all face due to crashes on our nation's roads lies squarely with how leadership sets agency priorities. The proposed budget of an agency is an outline of those priorities, and no matter how dedicated career staff may be, the agency tasked with overseeing so much of our nation's traffic safety cannot do its job with one arm tied behind its back. Underfunding this critical agency is counterproductive to public safety. The priorities outlined by Ms. King's budget raise serious concerns regarding whether NHTSA will be able to fulfill its statutory mission.

## 5. Civil Penalties

One of the key tools in ensuring federal vehicle safety laws and rules are followed by all regulated entities is enforcement by NHTSA. While civil penalties should be reserved for the most serious of violators, all safety agencies need to be prepared to employ the deterrent effect civil penalties have, not only on the party at fault, but any other potential violator.

Since Ms. King has been at NHTSA there have been all of two civil penalties announced: one against a trailer company for \$10,000 for failure to file Early Warning Reports, and one for \$20,000 against an individual auto dealer for the sale of unremedied recalled cars.<sup>10</sup> This lax attitude when it comes to enforcement of the law sends exactly the wrong message to those who might be tempted to violate the law simply as a cost of doing business and hope they can get away with it.

What is worse, is that one of the only steps Ms. King has taken since joining NHTSA is to actively work to rollback the implementation of inflation-adjusted civil penalties meant to ensure auto companies invest in fuel-saving technologies. While this unlawful delay was halted by the 2<sup>nd</sup> Circuit Court of Appeals, the inability or unwillingness to enforce

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<sup>9</sup> <https://www.transportation.gov/sites/dot.gov/files/docs/mission/budget/334271/fy-2020-nhtsacbj-submission-final-31219-tag.pdf>

<sup>10</sup> <https://www.nhtsa.gov/laws-regulations/civil-penalty-settlement-amounts>

the law, or use civil penalty authority, raises significant concerns about the nominee's likelihood of carrying out the statutory mandate of the agency she is asking to lead.

## 6. Airbags

Despite the agency's continued assurance that the Takata inflator recalls are a top priority, recall completion rates remain dismal and consumers continue to face a risk of death or serious injury. Under Deputy Administrator King, NHTSA has been unwilling to penalize manufacturers who perform poorly under the Coordinated Remedy Program, deferring and delaying manufacturer responsibility. Furthermore, NHTSA has failed to even request that manufacturers provide loaner vehicles to consumers with ticking time bombs in their dashboards. As a result, only a small minority of automakers have voluntarily chosen to provide their customers with loaner vehicles while awaiting airbag replacements.<sup>11</sup>

So far, the only step taken by NHTSA under Ms. King to address this issue (not including public service announcements) was a letter to each manufacturer that failed to meet the December 31, 2017 deadline to replace the most deadly and defective Takata airbags. Released only two days prior to her initial confirmation hearing last May, King's letters merely "invite" these manufacturers to "contact NHTSA."<sup>12</sup> At least 25 million airbags remain unreplaced, and the industry completion rate hovers around 65%. This "invitation" for an updated proposed timeline from NHTSA is months overdue, and based on prior history, it is hard to envision any penalty will be meted out by NHTSA for these gross violations of agreed upon timeframes for airbag replacement. Further delay serves only to prevent consumers from having defective airbags replaced that may explode and send shrapnel flying in their face or the faces of their loved ones.

## 7. Investigations

Since Deputy Administrator King took a leadership role at NHTSA, investigations have fallen to almost historic lows.<sup>13</sup> Despite continuing to receive complaints on a regular basis that raise questions of potentially life-threatening defects, the current NHTSA administration resists opening formal investigations. Delaying and preventing the opening of safety investigations risks unnecessarily exposing consumers to vehicle defects. In circumstances where investigations sit open for years while NHTSA and automakers go back and forth over the details, consumers remain at risk for even longer periods of time.

For the motoring public to have faith that this safety agency is looking out for the public first, NHTSA must have an Administrator willing to support the agency's enforcement

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<sup>11</sup> See *Staff Report for Senators Blumenthal and Markey: Automaker Report Card: Loaner Car Policies for Consumers Affected by the Takata Airbag Recall*, March 2018.

<sup>12</sup> See Ryan Beene, *U.S. Regulators Slam Low Takata Air Bag Recall Rate by Carmakers*, Bloomberg, May 14, 2018, at: <https://www.bloomberg.com/news/articles/2018-05-14/u-s-regulators-slam-low-takata-air-bag-recall-rate-by-carmakers>.

<sup>13</sup> Jeff Plungis, *US Auto-Safety Agency Defect Investigations at Historic Lows*, Consumer Reports, June 29, 2018, at: <https://www.consumerreports.org/car-safety/us-auto-safety-agency-defect-investigations-at-historic-low-nhtsa/>

wing in opening investigations – and once the investigations have been opened, following the data to its logical end in a timely manner that eliminates unnecessary and possibly deadly delay.

There are few products that impact as many Americans as automobiles. There is no agency that impacts the safety of those automobiles more than NHTSA. As the world has seen in recent weeks with the revelations of lax oversight leading up to the Boeing airline crashes, delegating the safety of the American people to industry is short sighted at best and extraordinarily dangerous at worst.

NHTSA needs an Administrator who has as her first priority the safety of each and every driver, passenger, and pedestrian. Deaths and injuries from traffic crashes remain a public health crisis, with over 37,000 dead and over 2 million seriously injured every year. Cars continue to hold their place as the number one killer of Americans ages 5-24. While new technology promises answers it offers little evidence yet of its reliability. Where proven safety technology exists, it should be required in all vehicles as soon as practicable.

Unfortunately, in her eighteen months as Deputy Administrator, Ms. King's record for removing unsafe vehicles from the road, as well as getting safety features into vehicles, raises serious concerns about her ability to lead NHTSA at this vital time in the history of auto safety. We recommend you vote against the confirmation of this nominee.

## **Conclusion**

On behalf of the Center for Auto Safety and our members, thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Levine". The signature is fluid and cursive, with a large loop at the beginning and a long tail.

Jason Levine  
Executive Director

cc: Honorable John Thune  
Honorable Roy Blunt  
Honorable Ted Cruz  
Honorable Deb Fischer  
Honorable Jerry Moran  
Honorable Dan Sullivan  
Honorable Cory Gardner  
Honorable Marsha Blackburn  
Honorable Shelly Moore Capito

Honorable Mike Lee  
Honorable Ron Johnson  
Honorable Todd Young  
Honorable Rick Scott

Honorable Amy Klobuchar  
Honorable Richard Blumenthal  
Honorable Brian Schatz  
Honorable Edward J. Markey  
Honorable Tom Udall  
Honorable Gary Peters  
Honorable Tammy Baldwin  
Honorable Tammy Duckworth  
Honorable Jon Tester  
Honorable Krysten Sinema  
Honorable Jacky Rosen