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# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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November 17, 2005

Ms. Jacqueline Glassman  
Acting Director  
National Highway Traffic Safety Administration  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Dear Ms. Glassman:

We are writing to you concerning the Notice of Proposed Rulemaking recently published by the National Highway Traffic Safety Administration (NHTSA) regarding the roof crush resistance for motor vehicles.

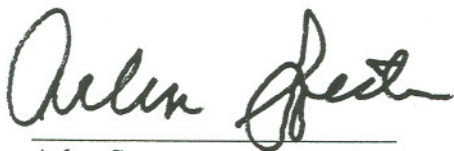
Specifically, we are concerned about NHTSA's proposal to "preempt all conflicting State common law requirements, including rules of tort law." In the section of the Transportation Equity Act (P.L. 109-59) directing NHTSA to initiate rulemaking proceedings on roof resistance, we have been unable to find references to State tort law or language similar to that included in your agency's proposed Rule. We note that in other contexts, Congress has intended that State law be preempted and has expressed that intention in its legislation. For example, a Title X provision in the Transportation Equity Act regarding rented or leased vehicles expressly provides that owners of such vehicles "shall not be liable under the law of any state." However, it has not done so in the roof resistance context.

It may also be relevant to look to Executive Order 13132, which states: "Agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law *only where the statute contains an express preemption provision or there is some clear evidence that the Congress intended preemption of State law.*" We are interested to learn how NHTSA concluded that preemption of State law was the intent of Congress when it passed the Transportation Equity Act.

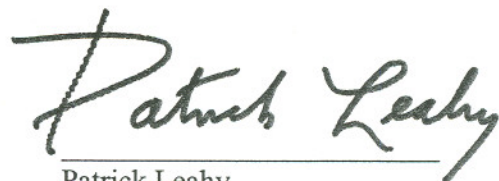
In the Transportation Equity Act, Congress mandated that NHTSA establish standards to "reduce vehicle rollover crashes and mitigate deaths and injuries associated with such crashes." It seems to us that this end will not be served by the new proposed Rule. If you contend otherwise, we would appreciate you explaining why that is so.

We appreciate your time and attention to this matter. We look forward to your responses to the questions raised in this letter.

Sincerely,



Arlen Specter



Patrick Leahy