

United States Senate

WASHINGTON, DC 20510

June 15, 2023

The Honorable Pete Buttigieg
Secretary of Transportation
Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Sophie Schulman
Deputy Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Secretary Buttigieg and Deputy Administrator Schulman:

We write regarding our concerns about the National Highway Traffic Safety Administration's (NHTSA) recent letter to auto manufacturers advising them not to comply with Massachusetts General Law Chapter 93K ("Right to Repair").¹ NHTSA's decision to give auto manufacturers a green light to ignore state law appears to favor Big Auto, undermine the will of Massachusetts voters and the Biden Administration's competition policy, and raise questions about both the decision process and the substance of the decision by NHTSA's leadership. We are asking NHTSA to explain its rationale for its harmful actions and respect Massachusetts state law by reversing course.

The Commonwealth's Right to Repair law requires auto manufacturers who sell cars in Massachusetts to equip them with a standardized open data platform so that owners and independent mechanics can access vehicle telematics data for repairs, maintenance, and diagnostics.² The law was passed via ballot initiative in November 2020, with nearly three-fourths of Massachusetts residents voting in favor.³ Within weeks, major automobile manufacturers — who spent \$25 million to oppose the ballot initiative⁴ — filed a lawsuit in Massachusetts federal court to stop the law from going into effect.⁵ In March 2023,

¹ Letter from Kerry Kolodziej, Assistant Chief Counsel for Litigation and Enforcement, NHTSA, to Counsel for Vehicle Manufacturers, June 13, 2023, <https://www.law360.com/articles/1688535/attachments/0>.

² Mass. General Laws Ch. 93K § 2.

³ Ballotpedia, "Massachusetts Question 1, 'Right to Repair Law' Vehicle Data Access Requirement Initiative (2020)," [https://ballotpedia.org/Massachusetts_Question_1_"Right_to_Repair_Law"_Vehicle_Data_Access_Requirement_Initiative_\(2020\)](https://ballotpedia.org/Massachusetts_Question_1_"Right_to_Repair_Law"_Vehicle_Data_Access_Requirement_Initiative_(2020)).

⁴ VICE, "Auto Industry Has Spent \$25 Million Lobbying Against Right to Repair Ballot Measure," Matthew Gault, September 29, 2020, <https://www.vice.com/en/article/z3ead3/auto-industry-has-spent-dollar25-million-lobbying-against-right-to-repair-ballot-measure>.

⁵ Boston Globe, "Auto manufacturers sue to block state's new right-to-repair law, after voters approved it," Jon Chesto, November 21, 2020, <https://www.bostonglobe.com/2020/11/21/business/auto-manufacturers-sue-block->

Massachusetts Attorney General Andrea Joy Campbell gave notice to the court and the parties that, after two years of litigation, the state would move forward with enforcing the law beginning on June 1, 2023.⁶ On May 30, 2023, the court denied the auto makers' last-minute request for a temporary restraining order to block enforcement of the law, rejecting arguments that the state law was preempted by federal statutes.⁷ As Judge Woodlock stated, "[a] vote is a vote is a vote . . . [p]eople have voted on this and that's the result."⁸ Attorney General Campbell began enforcing the law on June 1, 2023.⁹

Despite the court order, on June 13, 2023 — nearly two weeks after Massachusetts began enforcing the state law — Kerry Kolodziej, NHTSA's Assistant Chief Counsel for Litigation and Enforcement, wrote a letter to 22 auto manufacturers stating that the Right to Repair law is preempted by the National Traffic and Motor Vehicle Safety Act (Safety Act) and that their compliance with Massachusetts law would "conflict with [their] obligations under the Safety Act."¹⁰ The timing of this letter was extraordinary: NHTSA had ample opportunity prior to June 1 to raise preemption arguments through the judicial process, including: (1) in the multiple filings it submitted to the court since the litigation commenced nearly three years ago;¹¹ (2) as a response to Attorney General Campbell's announcement over three months ago that the state would begin enforcing the law on June 1;¹² and (3) even during the plaintiffs' eleventh hour attempt to stop enforcement of the law.¹³ Although the state and outside experts introduced evidentiary proof of the possibility of compliance at trial,¹⁴ NHTSA declined multiple requests from the judge to participate. Instead, NHTSA sent the June 13 letter with no warning, circumventing the legal process, contradicting a judicial order, undermining Massachusetts voters, harming competition and hurting consumers, and causing unnecessary confusion by raising this novel view two weeks after enforcement of the law began.

Moreover, NHTSA's position is not consistent with Administration policy. President Biden's *Executive Order on Promoting Competition in the American Economy* (EO 14036) states that it is the policy of the Administration to combat the "harmful effects of monopoly and monopsony . . . [in] repair markets," and encourages the FTC to draft new regulations limiting

[states-new-right-to-repair-law-after-voters-approved-it/](#).

⁶ WBZ News, "Massachusetts to enforce Right to Repair law starting June 1," March 8, 2023, <https://www.cbsnews.com/boston/news/massachusetts-attorney-general-andrea-campbell-right-to-repair-law/>.

⁷ Law360, "Auto Cos. Can't Halt Mass. AG's 'Right To Repair' Enforcement," Brian Dowling, May 30, 2023, <https://www.law360.com/technology/articles/1682744/auto-cos-can-t-halt-mass-ag-s-right-to-repair-enforcement>.

⁸ *Id.*

⁹ Boston.com, "New Mass. right-to-repair law now being enforced," Ross Cristantiello, June 1, 2023, <https://www.boston.com/news/local-news/2023/06/01/right-to-repair-law-massachusetts-enforced>.

¹⁰ Letter from Kerry Kolodziej, Assistant Chief Counsel for Litigation and Enforcement, NHTSA, to Counsel for Vehicle Manufacturers, June 13, 2023, <https://www.law360.com/articles/1688535/attachments/0>.

¹¹ See, e.g., *Alliance for Automotive Innovation v. Campbell*, Case No. 1:20-cv-12090, Dkt. No. 202 (D. Mass) ("United States' Statement of Interest").

¹² WBZ News, "Massachusetts to enforce Right to Repair law starting June 1," March 8, 2023, <https://www.cbsnews.com/boston/news/massachusetts-attorney-general-andrea-campbell-right-to-repair-law/>.

¹³ Law360, "Auto Cos. Can't Halt Mass. AG's 'Right To Repair' Enforcement," Brian Dowling, May 30, 2023, <https://www.law360.com/technology/articles/1682744/auto-cos-can-t-halt-mass-ag-s-right-to-repair-enforcement>.

¹⁴ See, e.g., Electronic Frontier Foundation, Amicus Brief, *Alliance for Auto Innovation vs. Maura Healey*, Attorney General of the Commonwealth of Massachusetts, No. 1:20-cv-12090-DPW, June 2021, <https://www.eff.org/document/eff-amicus-brief-re-automotive-innovation-alliance-v-healey>.

“manufacturers from restricting people’s ability to use independent repair shops or do DIY repairs.”¹⁵

It is disappointing that NHTSA’s letter relies on the argument pushed by major automobile manufacturers that there is, in this case, an irresolvable conflict between maintaining data security and providing independent repair shops with the data they need to conduct repairs. Auto manufacturers have routinely raised safety concerns as a way to “change the subject” and distract consumers from the fact that “vehicle repair and maintenance services from independent repair shops keeps the cost of service and repair down.”¹⁶ The district court itself considered these concerns, as previously raised by the plaintiffs and NHTSA, along with evidence from the Massachusetts Attorney General that auto makers could comply with both laws, and concluded that any safety concerns did not override Massachusetts’s right to enforce the law.¹⁷

We urge NHTSA to reconsider its decision and allow Massachusetts to enforce the will of its voters and protect consumers. Given the unusual timing of this decision, we also ask that the Department of Transportation and NHTSA respond to the following questions:

1. What is the explanation for the timing of this action by NHTSA?
 - a. Why did NHTSA leadership decide to send this letter to auto manufacturers on June 13, nearly two weeks after enforcement of the law began?
 - b. Why did NHTSA decline to share its view on preemption with the court earlier in the litigation?
2. What steps did NHTSA take to substantiate the validity of auto manufacturers’ claims about safety concerns?
 - a. What process did the agency go through to reach its conclusions in the June 13 letter?
 - b. Which tests did NHTSA conduct and what technical experts did NHTSA officials consult with regards to the agency’s conclusions about the legal and safety aspects of the Right to Repair law in the June 13 letter?
 - c. Did NHTSA review the evidence provided in court by the Massachusetts Attorney General and outside experts regarding the capacity of auto manufacturers to comply with both federal and state law? If so, what did the agency conclude about this evidence?
3. Did NHTSA officials meet with lobbyists or representatives from the automobile industry regarding the legal and safety aspects of the Right to Repair law?
 - a. Please provide a list of all meetings between NHTSA officials and automobile industry representatives regarding this matter, including dates of the meetings, all meeting attendees, and meeting agendas.

¹⁵ The White House “Executive Order on Promoting Competition in the American Economy,” July 9, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy>.

¹⁶ VICE, “Auto Industry Has Spent \$25 Million Lobbying Against Right to Repair Ballot Measure,” Matthew Gault, September 29, 2020, <https://www.vice.com/en/article/z3ead3/auto-industry-has-spent-dollar25-million-lobbying-against-right-to-repair-ballot-measure>.

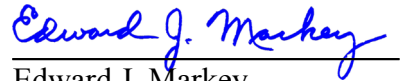
¹⁷ Law360, “Auto Cos. Can’t Halt Mass. AG’s ‘Right To Repair’ Enforcement,” Brian Dowling, May 30, 2023, <https://www.law360.com/technology/articles/1682744/auto-cos-can-t-halt-mass-ag-s-right-to-repair-enforcement>.

4. Did NHTSA consider alternative approaches that would address the agency's purported safety concerns and allow the Right to Repair law to take effect? Did NHTSA provide technical or legal guidance to automobile manufacturers to update or modify their systems to allow compliance with the law?
5. What agencies or Administration leadership did NHTSA consult prior to sending this letter? In what way did NHTSA ensure that the letter would be consistent with prior Administration policy regarding the promotion of competition, such as EO 14036?

Sincerely,



Elizabeth Warren
United States Senator



Edward J. Markey
United States Senator