HOW THE CLEAN AIR ACT AFFECTS AUTO REPAIR

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT & GOVERNMENT PROGRAMS

OF THE

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TUESDAY, JUNE 28, 2005

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS
COMMITTEE ON SMALL BUSINESS
Washington, DC

The Subcommittee met, pursuant to call, at 2:03 p.m. in Room 311, Cannon House Office Building, Hon. Marilyn N. Musgrave, [Chairman of the Subcommittee] presiding.

Present: Representatives Musgrave, Lipinski, Shuster, Udall, and Westmoreland.

Chairwoman MUSGRAVE. Good afternoon and welcome to the Workforce, Empowerment and Government Programs Subcommittee. Today's hearing will focus on how the Clean Air Act affects auto repair.

I appreciate everyone's participation in this hearing, particularly those of you that have traveled great distances to get here.

When the Clean Air Act of 1990 was passed, it included a provision that required automobile manufacturers to provide an on-board diagnostic system to monitor emissions. Car makers were required to show this information to facilitate repair diagnoses pertaining to emissions. No other vehicle systems were subject to the disclosures mandated by the Clean Air Act.

However, as more systems on our cars became electronically controlled, some independent repair shops began reporting difficulty in acquiring information to diagnose other computer-controlled systems within vehicles.

Today, automobiles have several complex computer systems that control braking, ignition, security, steering, emissions, safety, and climate control. As a result, the information and expertise needed to diagnose and repair them has increased dramatically.

It is estimated that most newer vehicles have a minimum of 15 separate computers on-board. This hearing will focus on H.R. 2048, "The Motor Vehicle's Owner Right to Repair" bill introduced by Representative Joe Barton. I appreciate Chairman Barton coming here today to offer his testimony before this Subcommittee on this bill.

U.S. consumers spend almost $200 million to maintain and repair the 200 million cars on the road. The American economy also benefits from a competitive after-market industry that provides jobs to more than 5 million workers in almost 500,000 predomi-

nantly small businesses, and generates more than $200 billion in sales annually.

I look forward to receiving testimony from other witnesses as well. It is important to hear the perspective of all parties effected by this issue, whether they are franchisees, independent repair shops or dealership owners, all of them have one thing in common. They are all small businesses.

I now recognize our distinguished Ranking Member on the Subcommittee, Representative Lipinski, for his opening statement.

[Chairman Musgrave's opening statement may be found in the appendix.]

Mr. LIPINSKI. Thank you, Madam Chairman.

As we advance in the twenty-first century so do our cars and trucks. Today's vehicles continue to get more and more sophisticated with technological advances such as computerized navigation and ignition systems. In recent years, there has been a push to make our cars more resilient, powerful, and environmentally sound.

Along with today's automotive advancements comes a need for advanced knowledge of repair and service. There is an obvious gap here. The types of repair manuals that may have sufficed a decade ago simply do not provide the information necessary to repair newer, more complex vehicles.

Today's repair shops need to know how to check settings, component schematics, and equipment interfaces, something they simply aren't able to get from repair manuals.

As vehicles become more complex, the lack of readily accessible repair information would have undesirable consequences. With fewer shops available to do a repair, we have to expect increased cost for car owners. Given the expenses that already exist with today's vehicles, consumers do not need any additional cost for their cars.

It is important that consumers have options when it comes to getting their cars repaired, and that they can rely on their local repair shops to get the job done. Many people turn to their long-time neighborhood mechanics, the ones that they have come to trust, who are usually small business owners, but how do mechanics understand the mechanical, technical, and computer systems on each car model?

Currently in place is a voluntary system for sharing information between automobile manufacturers and service shops. This system is designed to allow web-based access to information on how to repair and service vehicles from over 30 different brands. But there are questions about how well this voluntary system works.

Today's hearing will examine whether there is a problem and to what extent it persists. We will specifically look at one possible solution, H.R. 2048, the Right to Repair Act, which has been introduced by Mr. Barton, Chair of the Energy and Commerce Committee. I applaud Mr. Barton for his work on this issue, and I look forward to hearing his testimony.

H.R. 2048 creates a system that would allow access via the Internet to repair information and service training for all parts of the vehicle. This would be administered and enforced by the FTC. In addition, the bill creates a legal duty to immediately provide a ve-

hicle owner or repair shop of the owner's choosing with all the necessary information to diagnose or repair the vehicle. This sounds like a reasonable approach, but we must evaluate all of its possible implications.

As the Committee proceeds today to examine this issue, it is important to ensure that whatever solution is found does not have unintended negative consequences. While working to solve one problem, we need to guard against creating additional ones through our actions.

Clearly, there are small businesses on both sides of this issue, whether it is an independent repair shop or a local dealership, all of whom would be impacted by the right to repair bill. It is very important that we carefully examine the issue and evaluate the necessity for these types of changes.

The automotive service and repair issue involves many players—repair shops, dealerships and consumers, and we need to make sure that any changes are fair and balanced for all of those involved. We want to have a system that provides information, doesn't give one entity an advantage over the other, and in the end gives the consumer the best possible deal.

This is an important topic and I look forward to hearing the testimony of today's witnesses and to our discussion. Thank you.

Chairwoman MUSGRAVE. Thank you, Mr. Lipinski.

Mr. Westmoreland, would you like time for an opening statement?

Mr. WESTMORELAND. Yes, ma'am. Thank you, Madam Chairman, for holding this hearing today, and I appreciate all the willingness of all you to come testify and to be present during this hearing. It is nice to see that we have got somebody from Georgia here, Mr. Ehlert, and we welcome him to testify, and I have met with representatives from most of the organizations and associations present today, and I must admit something is not quite making sense about this whole thing.

Now, I have not heard from any of my constituents. I have called some of the auto repair dealers in my district, but what I have heard from is a lot of people from across Georgia that are not in my district, and somebody out there, Ms. Chairman, is spending a lot of money doing some third-party phone calling. And I know it is good money that you are spending and I would use it wisely, but when you connect them with a congressional office you might want to make sure that it goes to the office that they actually have some representation from.

Always, there are a lot of disparities in the stories that you hear up here, and this one is no different. I look forward to hearing today from both sides. I am going into this hearing with an open mind, and the main thing that really bothers me, I guess, is the fact that we are trying to create a new bureaucracy for them to look at a problem or an issue that from my understanding and from my looking into the issue that there is already a private sector mechanism that is in place to work.

Now, it may have some problems, but we are here today to hear about those problems and learn what we can do about it, and Ms. Chairman, that is what I have. Thank you.

[Congressman Westmoreland's opening statement may be found in the appendix.]

Chairwoman MUSGRAVE. Thank you. Mr. Udall.

Mr. UDALL. Madam Chair, thank you very much, and appreciate you holding this hearing. I think that we are all concerned about the Clean Air Act and concerned about how the Clean Air Act impacts auto repair and small business.

I would welcome the witnesses. I know that many of them have come from a long distance, and appreciate having them here.

Clearly, there are a couple important issues here today. One concerns consumers, and the ability for them to get their autos repaired. Another is the issue of small business. We have independent small businesses and also franchise dealer shops and other variations that are out there, and we need to make sure we are being fair to all of them, and the key issue, as the previous speaker, my colleague just mentioned, is this national automotive service task force.

We have a voluntary system in place. I will be very interested to hear from the witnesses how it is working, what are the problems, and it seems a key issue here is if it is working well, why replace it.

So with that I look forward to getting to the witnesses, and thank you very much, Madam Chair.

Chairwoman MUSGRAVE. Thank you, Mr. Udall.

We are waiting just a moment on Chairman Barton. We will see if he can be here shortly, if you will be patient for a moment, please.

[Off the record.]

Chairwoman MUSGRAVE. Welcome to the Committee, and we are delighted that you are here and look forward to hearing from you.

STATEMENT OF THE HONORABLE JOE BARTON, ENERGY AND COMMERCE COMMITTEE

Mr. BARTON. I am glad to testify before the Small Business Committee on H.R. 2048, the Right to Repair Bill. I have a formal statement. Do you want me to just put in the record and talk, or do you want me to read it?

Chairwoman MUSGRAVE. Why do you not put it in the record and just talk to us.

Mr. BARTON. Okay.

Chairwoman MUSGRAVE. That would be great.

Mr. BARTON. Then I would ask unanimous consent to put the statement in the record, and let me just briefly apprise the Committee of what we are trying to do.

We all have in our districts hundreds and in some cases maybe thousands of small businesses that sell auto parts and repair cars and trucks. Many of our constituents do not have new cars. The cars are not in warranty. So when they need a repair, they need a part. They want to take it to an independent auto repair shop.

Because of the complexity of today's engines, more and more the diagnostics are such that it takes special computer equipment, special computer programs to even find out what is wrong with the car. And our automobile manufacturers who have done world-class

engineering more and more are reluctant to share the information with the small independent auto repair shops.

So about four years ago I was approached by some—in the repair industry in my district, and we sat down with the dealers and we sat down with the manufacturers, and we tried to come up with a voluntary agreement to share nonproprietary information with these repair shops.

There was a volunteer agreement. That volunteer agreement kicked in in late 2002, which is almost three years ago or is three years ago, and the manufacturers and the dealers said problem solved.

The problem with that is the problem is not solved. You can pay for the computer. You can pay for the software. You can get your PIN number, and somebody comes in with a vehicle to an independent shop, it can take between eight days to two weeks to get the information necessary to repair that vehicle. Not many people are going to wait that long.

So earlier this year I reintroduced H.R. 2048 which would require that that information be shared. Again, it is nonproprietary. We are not trying to seal the trade secrets of GM or Chrysler or Ford or Toyota or Mazda or anybody else, but we are saying that it is the tradition in this country that you have an independent auto parts industry and an independent repair industry, and if the industry cannot have a voluntary agreement, then we will stipulate in federal law how that information—again in a nonproprietary fashion—has to be shared.

The bill is introduced. It is in the jurisdiction of the Energy and Commerce Committee, which I happen to Chair, and we are waiting to see if we can get voluntary agreement. If we cannot, I am prepared to move the bill, and I believe I know how to count votes. I believe we have got the votes to pass it. I think if we put it on the floor, it is going to pass overwhelmingly.

In the last Congress, a bill similar to this bill had over 100 cosponsors, and we are endorsed by the AAA, the NFIB, which is a small business association, the Retail Industry Leaders Association, and a number of other groups. So I think this issue has legs. I think the publicity that you are going to give it today and the information that is going to be elicited by this hearing will probably give us some much needed momentum.

And with that, Madam Chairwoman, I would be happy to answer questions.

[Congressman Barton's statement may be found in the appendix.]

Chairwoman MUSGRAVE. I think at this time I will ask, Mr. Westmoreland, if you have questions.

Mr. WESTMORELAND. Thank you.

Mr. Chairman, you said that with the voluntary system as it is now if somebody went on the web page or whatever it is to get it, it would take?

Mr. BARTON. Eight to 15 days.

Mr. WESTMORELAND. Eight to 15 days. Now, is this from the website that the manufacturers and dealers have put up or is this another site?

Mr. BARTON. No, it is the site that has been voluntarily agreed to, and the repair, the independent repair shop still has to pay for

the computer, has to pay for the software, has to pay a licensing fee, has to get a PIN number, but when they do that they go through the protocol, and eventually it just comes up. They do not get the information.

They call the hot line number, and they get, you know, they get referred, and get back to you. On the other hand, if you are a certified dealer, they will get you an answer in about 30 minutes.

Mr. WESTMORELAND. Okay. The proprietary portion of this, this is nothing—these requests do not have anything to do with those types of things such as emissions or security—

Mr. BARTON. No.

Mr. WESTMORELAND. —or whatever?

Mr. BARTON. And the bill as drafted now stipulates that.

Mr. WESTMORELAND. Okay.

Mr. BARTON. See, I have dealers too, and I have a GM assembly plant in my district. I am not trying to—

Mr. WESTMORELAND. No, sir. I understand.

Mr. BARTON. —take unfair advantage.

Mr. WESTMORELAND. I understand that, but do you happen, and this is where I am having a little bit of problem understanding it, do you have a list of specifics that you could give that would, I guess, make it—to show that it is to a point that has to have federal legislation to correct it?

Mr. BARTON. Well, we could have a laptop computer brought into your office or probably even on your own computer and let you run through the protocol. You would have to get the correct passwords and that kind of thing, and let you see for yourself.

Mr. WESTMORELAND. I know, but I am talking about the specific things. Is this like a braking system? Is it for carburetor adjustment?

Mr. BARTON. Oh, it varies. It really varies more by manufacturer than it does by specific components. You know, some of the manufacturers have worked very well to try to comply and some of them have paid lip service to it, but have not really been—in terms of what is the most difficult information to get, my understanding is it is not like you can get information on diagnosing a suspension problem, but you cannot get information diagnosing an emission problem. I am not led to be—it is kind of an across-the-board thing by manufacturer.

Mr. WESTMORELAND. So it could be more GM or Ford or Mazda or Toyota?

Mr. BARTON. It is really more the—the U.S. manufacturers have been more cooperative than the non-U.S. manufacturers.

Mr. WESTMORELAND. Thank you. Thank you, Madam Chairman.

Chairwoman MUSGRAVE. Mr. Lipinski, do you have a question?

Mr. BARTON. Is that how you always announce Mr. Lipinski's questions?

Chairwoman MUSGRAVE. He is a very important member.

Mr. BARTON. God comes into the hearing room and says now we hear from Mr. Lipinski.

[Laughter.]

Mr. LIPINSKI. Happens all the time.

Thank you, Mr. Chairman, for coming here before our Committee. I just wanted to—just one thing I wanted to ask you. What has been the opposition to this legislation?

Mr. BARTON. The opposition?

Mr. LIPINSKI. Why has there been—why has there been opposition? Why is there opposition to it? And what would your arguments be?

Mr. BARTON. Well, there is a natural tension between the certified dealers, which we all have in our district, and the independent auto repair groups. The dealers, you know, rightfully believe in their—you know, if you are a Ford dealer and somebody has a Ford, they ought to bring it to your shop to be repaired. And the manufacturers obviously give preference to their authorized dealers.

So the tension is really between the independents and the authorized dealers of the original equipment manufacturers, and the manufacturers are not—they do not say they have no obligation to share this information, that would—they agree that they should. They just do not put as high a priority on getting the information in a timely fashion, and they do make the argument that some of what the independents want is proprietary.

I think the proprietary argument is a specious argument. I do not—you know, we have got specific language in the bill that we are not trying to get proprietary information. If they testify later in the day, their argument is probably going to be they do not want to give away proprietary information, and that they have a right to give preference to their authorized dealers.

I do not argue on the authorized dealers having some preference, but even having said that I still think the independent has a right to get the information in a timely fashion, and I do not think eight to 15 days meets the definition of timeliness.

My young staffer had a little fender-bender last week, and he was without a vehicle for a week. That is not right. You know, you need to get it fixed and get going.

Mr. LIPINSKI. Okay, thank you for your work on this, and thanks for coming before the Committee.

Mr. BARTON. My pleasure.

Chairwoman MUSGRAVE. Mr. Udall, do you have questions?

Mr. UDALL. Just one brief question, Madam Chair.

Chairman Barton, thank you very much for coming today and I know you are very busy over in your Committee, and we appreciate you spending a few minutes with us.

As I understood your testimony earlier, it sounded to me like you really wanted this voluntary system to work.

Mr. BARTON. That is true.

Mr. UDALL. And that you are saying you would only move the bill if this system could not be fixed and up and working and all of that.

I am looking at the—the question I have is at the opposite side of that, is if you pass your bill, does that do away with the voluntary system? Do you view it as supplanting the voluntary system that is in place?

Mr. BARTON. Well, it would certainly enhance it. It would make some of these things mandatory. It would have an enforcement

mechanism to it. I would prefer a voluntary agreement. I have been waiting three years. I mean, I started this process in 2001. They had the agreement in 2002. It is now 2005, and again the dealers and the manufacturers say it is all there, it is working. The people have to use the system say, well, we can now get on the Internet or the phone and dial up, but we still cannot get the information.

And to go back to Mr. Westmoreland's question, you really do not know what you are not going to get until you cannot get it, so they are very frustrated by this continuing hamstringing of this so-called voluntary system.

Mr. UDALL. So would you view it as supplementing the voluntary system or doing away with it completely, your bill?

Mr. BARTON. I think the straight answer would be it would replace it.

Mr. UDALL. Would replace it.

Mr. BARTON. Yes, sir.

Mr. UDALL. Thank you very much for your candor and appreciate having you here today.

Mr. BARTON. Sure.

Mr. UDALL. Thank you Madam Chair.

Chairwoman MUSGRAVE. Chairman Barton, has the legislation changed significantly since you first introduced it?

Mr. BARTON. We have tried to take the concerns of the manufacturers and the dealers on the proprietary nature, and the original bill had a mandatory enforcement provision that we have taken out. So we have really tried to work with the manufacturers and the dealers to address the problems that they have talked about in the testimony before my Committee.

I think if we move the bill, at least some of the manufacturers would be supportive, and I think some of the dealers groups would be supportive.

Chairwoman MUSGRAVE. I believe Mr. Westmoreland has another question, and thank you for answering that one.

Mr. BARTON. Sure.

Mr. WESTMORELAND. Mr. Chairman, kind of what Mr. Udall said as far as the voluntary and the mandatory. I have sat down with both groups and both groups have told me they were willing to sit down.

Mr. BARTON. They have been telling me that for four years.

Mr. WESTMORELAND. So from talking to you it seems like they did not. Do you know—they have both been telling you the same thing, that they are willing to sit down and do something?

Mr. BARTON. And progress has been made. I do not want to mislead this Committee. The system works better today than it did four years ago. You can get information. Sometimes you can actually get it on a timely basis, but there are a lot of times that you cannot.

Mr. WESTMORELAND. Do you think this may be like the settling of lawsuits on the courthouse steps, that it will be only after the dropping of a bill or whatever before an agreement can be reached where one side or the other side is willing to make concessions?

Because evidently from talking to both groups, you know, they both say they are ready to sit down, and one says the other one will not, and the other one says the other one will not.

Mr. BARTON. I am sorry you have gotten in the middle of that. I thought I was the only one that had that problem.

Mr. WESTMORELAND. Well, we share that enjoyment, and it has been fun meeting and hearing both sides of it.

Mr. BARTON. The difference is that my patience is about exhausted.

Mr. WESTMORELAND. You have been dealing with it a lot longer than I have.

Mr. BARTON. Now that I Chair the Committee instead of just a Subcommittee—

Mr. WESTMORELAND. Yes, sir.

Mr. BARTON. —I am very confident that if we cannot get an agreement, that we can move the bill. I mean, you folks know as much as I do about how the vote would be on the House floor, but we have got a lot of support from consumer groups and low-income groups. A lot of members of the Black Caucus are either sponsors or willing to be sponsors. I think this bill on the floor probably gets 350 votes.

It is a question if you are a Republican, do you believe in volunteerism or do you believe in another federal mandate? And I have been trying not to have to resort to a federal mandate. But if we do not get them together pretty quick, we are going to start moving the bill, and I have got a couple of senators have said they will introduce the bill in the Senate, so I think we could make this a law pretty quick if we had to.

Mr. WESTMORELAND. Yes, sir. Well, I agree with you. I think volunteerism is certainly the approach. We hope it will take, and I really cannot get a good grasp on the magnitude of the problem, and if this is one person or two people or 100 people or whatever going without their car for three or four or five days. You know, I have been without mine that long, so I understand that.

But you know, I hope that the magnitude of it is out there that would warrant something like this, and I am sure that you have heard all the evidence and feel comfortable that that is the case. And so, you know, it is something that we need to look into, and I appreciate the Chairman having this meeting so we can hear the different sides of it.

Thank you very much.

Mr. BARTON. Thank you, sir.

Chairwoman MUSGRAVE. I just would ask you a couple more things. Are there specific things that would just remedy this situation? Could you give me any specifics of what you would like to see happen?

Mr. BARTON. You have to have a system that if the independent repair entity pays the appropriate amount of money, gets the software, gets the code words, gets all of the proper documentation so that they have access to the system, not trying to rip them off, not trying to get something for free, not trying to do something back door. But you go through all the certifications, and that can cost 30 to 40 - 50 thousand dollars. I mean, it is a non-trivial sum. But if you do that, and a vehicle comes into your shop, you should be able to access the system through the various websites that have been authorized with the appropriate software, and get an answer that day. Get an answer as soon as you get logged into the system;

not get the answer—these endless do-loops that they just get the run-around and run-around, and you have provided all the certification and all the documentation, and you just end up—the system does not provide you the information.

So my litmus test is, you know, that I do not think it has to be as fast as the dealer network. I respect that. You know, if I am authorized dealer of General Motors, I think I should have priority. I am okay on that.

But if the dealer gets it instantaneously or gets it within 30 minutes, the independent ought to be able to get it within a couple of hours, something like that. That is kind of where I am.

Chairwoman MUSGRAVE. Okay, anymore questions for the Chairman?

Mr. Shuster is here.

Mr. BARTON. Is that "Home run Shuster?"

[Laughter.]

Mr. BARTON. You know he could have had an inside the park home run in the congressional baseball game.

Mr. SHUSTER. Speedy Shuster. Well, I just want to tell you, Mr. Chairman, that was the first lay-down triple in the history of baseball.

[Laughter]

Mr. SHUSTER. Because after I hit it, I had to go in the dugout and lay down.

[Laughter.]

Mr. BARTON. Well, you know, I saw you coming around second base. The ball is still out at the outfield fence, but it did not look to me like you had the steam to make it to home.

Mr. SHUSTER. I did not. I did not.

Mr. BARTON. But you did hit it far, that is the good news.

Mr. SHUSTER. That is what counts, and Putnam scored.

Mr. BARTON. He did. He did.

Chairwoman MUSGRAVE. Mr. Shuster, after hearing about your personal physical condition, I am wondering if you have any questions.

[Laughter.]

Mr. SHUSTER. I think I bring a perspective to this that other members may not. My family had a tire business which was a repair shop. I went to work for the Goodyear Tire and Rubber Company in a repair shop, and then I owned an auto dealership for 13 years.

My concern is that we are going to set up a new bureaucracy in the federal level, and I do not know that we already have not solved our problem with the industry and what they are doing, because I know we were able to get that information, maybe not as quickly—when I was in the repair business—as quickly as a dealer does.

But on the other side of that coin the dealers spend a lot of money, and the manufacturers spend a lot of money developing these things, and the notion that private car owners do not have a choice, I do not think is accurate because they do have a choice. There is six Chevy dealerships within an hour of my house, or five Chrysler dealerships, so I think there is choice out there, and I

know from experience that the independent garage can get that information, maybe not as quickly, but on that same point.

I do not know that they have spent the money and have the investment that a dealer has that they should get it.

Mr. BARTON. You missed some of my opening statement.

Mr. SHUSTER. I apologize.

Mr. BARTON. I do not—you do not have to apologize. It was not that good of an opening statement, you know.

But I am not quibbling with the dealer having access to the information instantaneously or as quickly as possible. You know, if your care is under warranty, most people are going to take it to the dealer.

It is these cars that are secondhand, used cars that are not under warranty, a moderate income family does not have the means to take it into the authorized dealer because of the higher labor cost and the overhead cost and all of that, so they take it to an independent repair shop.

The independent repair shop, if they paying the licensing fee, if they pay for the software, if they get the proper code words and passwords and PIN numbers, that independent repair shop, in my opinion, as a right to get the information as long as it is nonproprietary in a timely fashion. It does not have to be—if the Chevrolet dealer can get it in 15 minutes, I do not think the independent ought to get it in 15 minutes, but they ought to get it some time that day.

Mr. SHUSTER. Right.

Mr. BARTON. They ought to be able to get it and get the part and repair the vehicle, and diagnose the problem, and get it back to the owner. And again, I have had the laptop computer set up in my office, and watched them try to get access to the information, and they finally get to a screen, and it just—it just dead ends. It is just kind of the straight line on the heart monitor. It just is not going to happen.

Mr. SHUSTER. And I would say too coming from a dealer's point of view, sometimes the dealer does not get the information as quickly as we should for a number of different reasons.

But still I wonder too, I know that CARE, the Coalition for Automotive Repair Equality, I am not—I think I know who they are. My concern is is that these huge automotive parts companies that—what they are doing by trying to get this information is to reverse engineer these parts, and be able to get these parts cheaper, and take that—take a lot of that business away from dealers.

Mr. BARTON. But the bill specifically says that is illegal. We are not trying to do that. We are not trying to take the best engineering of Detroit, and as you put it, reverse engineering. That is not the concept that we are attempting to get.

What we are trying to do—I mean, everybody in everybody's district, you have got a lot of authorized dealerships, and you also have a lot of independent repair shops, and that has built up over 100 years.

Mr. SHUSTER. Right.

Mr. BARTON. The technology has changed. It used to be—I am old enough that I actually could work on my cars. You know, I could actually go out and change the spark plugs, and adjust the

timing, and change the timing belt, and put in new rings and all this kind of stuff.

Now when the car stops you have to plug it into a computer, okay, and the computer is going to tell you what the problem is, and what I am saying is the independent shop, if they are willing to make the investment, needs to have access to that same diagnostic ability and be able to pinpoint the problem and get the part and get the car repaired. If we can work that out on a voluntary basis, fine.

I have been trying for four years to get a voluntary agreement that actually works. The people on the manufacturing and the dealer side say that it works. The people on the receiving end say it does not work.

Mr. SHUSTER. Well, I—and again, with all due respect to the Chairman, I think that that information is out there. It is available. It is not always as smooth and as easy as it could be, but as a former dealer, and there were times when we could not get that information as quickly as we wanted to, and I would just caution us against the federal government going out there and doing something, setting up a new bureaucracy, trying to force things down peoples' throats.

And I think that you are right that the manufacturers, and I think they do, they want—they have customers out there that do not always want to go to the dealers for various reasons that you have mentioned, and they want them to have other opportunities. So I hope we can do this without legislation.

Mr. BARTON. All right. I have a feeling in the next week or so some of these independent repair shops may contact you.

Mr. SHUSTER. Well, I look forward—

Mr. BARTON. We may let them show you their system.

Mr. SHUSTER. I look forward to that. Thank you.

Mr. BARTON. Thank you, sir.

Chairwoman MUSGRAVE. Thank you, Mr. Chairman. We appreciate you being here today.

Mr. BARTON. I appreciate the opportunity.

Chairwoman MUSGRAVE. At this time I would like the second panel to come up. Mr. Westmoreland mentioned that he had someone here from Georgia today. Well, I have someone here from Fort Collins, Colorado. So the second panel will come up, please. Mr. Houska, Fred Bordoff, Eddie Ehlert, Aaron Lowe, John Cabaniss and Kathleen Marvaso.

[Pause.]

Chairwoman MUSGRAVE. Welcome all of you, and when you speak if you would pull the microphone a little closer to you. The acoustics are not that good in this beautiful room, but then we can all hear you.

Mr. Houska, welcome. Proud to have a Coloradan here today from my district, and we are looking forward to hearing from you.

We will adhere to the five-minute rule, so if you will watch the light, and that will give you an indication of when you should sum up. Thank you. Go ahead.

STATEMENT OF DENNIS HOUSKA, HOUSKA AUTOMOTIVE SERVICE

Mr. HOUSKA. Madam Chairman, members of the Subcommittee, I am Dennis Houska, President of Houska Automotive Services Inc. located in Fort Collins, Colorado. Thank you for the opportunity to address you today on an issue that is vital to my business.

My father started our auto repair over 50 years ago in a two small bay garage. I am the second generation in the business and my son will be the third. I have grown up in and spent my whole life in the auto repair business. Our shop has grown up over the years to be a 24-bay facility that works on all types of vehicles.

Houska Automotive now has 25 employees. We pride ourselves in being a one-stop auto repair for all of our customers' needs. We have built our base on loyal customers because of our quality work, convenience, and competitive price. But, even more, based on trust.

Our shop has many business affiliations. We are a AAA Preferred Auto Repair, AC Delco Service Center, Bosch Repair Center, and a member of the Better Business Bureau, and a member of the NFIB.

I have been a member of ASA for many years. Even though I am a member of ASA, I strongly disagree with their position on this bill. For some reason, they do not believe that there is that bad of a problem in getting timely information, but my years of experience has told me otherwise.

We are also a NAPA Auto Care Center since the implementation of the program. To be a NAPA Auto Care Center, you must employ ASE certified technicians, have an ongoing training program and adhere to the NAPA's code of ethics.

I am also a member of the Bottom Line Impact Group. This is a collection of independent auto repair businesses from around the country and we get together to discuss automotive management problems and the future of our industry.

We have technicians who are specialized in the different areas and makes of automobiles. Our technicians are ASE certified—most are master techs with an L1 certification. Many of our employees have been factory trained in different makes of cars. We have an ongoing education through classes offered by NAPA, AC Delco, Automotive Training Groups, Car Quest, Bosch, our state education programs, and even through ASA.

We also have an on-line and N.I.A.T. self-study courses available. Several of our employees have received the Top Tech Award for our community for their commitment to further their education. Each employee is required to continue his or her education every year.

Being an independent auto repair business owner has great rewards and sometimes great challenges. But one challenge that I believe is unnecessary is the challenge of accessing all the information in all the model lines of all the different manufacturers. This challenge can be overcome by the passage of the Motor Vehicle Owner's Right to Repair Act.

There is no one diagnostic tool that gives us enough information for all the makes. Several years ago we made the decision to invest in the scan tools of the different manufacturers, at a great expense to us. If the information was accessible for the tool manufacturers, they would be able to develop and produce one tool that could ac-

cess and reprogram all the different makes of cars, saving us an our customers a great deal of added expense.

We have purchased the Snap-on scanner, the Master Tec, the Tec 2, the Val Tec, the DRB-3, Pro Link, Genisus, and NGS, just many other manufacturers' tools. Not only do we have the initial cost of each tool, but also the cost of the year update, but another problem is that the manufacturers are also always changing the scan tools, so every few years we have to repurchase an additional scan tool for the make.

But this is not the main reason I support the bill. Tools are part of the challenge no doubt, but the main challenge and the one I am left—if left uncorrected could put me and my business—put me out of business information.

We subscribe to several information systems. We have Alldata, On-Demand, IATN, and Identix. We also use service of hot lines, which we can call when we need more information. These are great resources, but there are times when we need more precise information that is absolutely necessary to properly diagnose and repair the vehicle.

Chairwoman MUSGRAVE. Okay, your time has expired, and perhaps in questioning you will get an opportunity to say some more things. Thank you.

Mr. HOUSKA. Thank you.

[Mr. Houska's testimony may be found in the appendix.]

Chairwoman MUSGRAVE. Okay, our next witness is Mr. Fred Bordoff.

STATEMENT OF FRED BORDOFF, SERVICE STATION DEALERS ASSOCIATION

Mr. BORDOFF. Good afternoon. My name is Fred Bordoff. I am Vice President of the Service Station Dealers of America and Allied Trades, known as SSDA-At. SSDA-AT represents over 15,000 independently owned service stations and repair facilities in over 50 states, either through direct membership or through affiliation with affiliated state associations.

On behalf of our members, I want to thank the Chairman and Members of the Subcommittee for the opportunity to present our views on the challenges and difficulties encountered by the independent auto repair technicians as a result of the refusal of the auto manufacturers to share with us the same technical information furnished to their own dealers.

The direct result is that the independent technician is not able to perform repairs on these automobiles. In instances when manufacturers do grant access to information and programs, it is done at costs which are often prohibitively high to the small independent auto repair shops, thus effectively causing them to be unable to render these services, and forcing their customers to have repairs done at auto dealerships.

The complex computerized systems of the modern automobile render it essential to have the proper information and training.

I am the President of the New York Center for Automotive Technology, an independent general repair shop located in Queens, New York. Because my facility is engaged to perform repairs for a major dealership in New York, which sells great numbers of used cars

and which owns several new car franchises, I am granted some access to information which allows us to perform repairs, but in general the average independent technician often cannot tend to a customer's repair needs. I will offer a few examples to illustrate the problem.

A Volvo owner complains that the driver's side window does not go down. After testing, the diagnosis is a bad window switch. A new switch is purchased from Volvo and installed. The new switch does not work. Further investigation reveals that the switch has to be programmed by the Volvo dealer. The car then has to go to Volvo to complete the repair. This is likely to cause delay and frustration to the customer, who will resort to Volvo services in the future instead of the independent facility.

Another example is that of a motorist driving a BMW, who experiences poor performance on the road, and then sees the service engine light go on. He or she pulls into a convenient diagnostic facility. It is determined that the throttle body is at fault. A new throttle body is purchased from the local BMW dealership and installed. The car will not even start now without being programmed by at the BMW dealership. Imagine the reaction of that customer who drive on a car and has to see it towed out.

On many of today's cars, if the battery goes dead, the radio loses its memory. After a new battery is installed, it is discovered that the radio now does not operate. The radio now has to be coded by a dealership service facility since they are the ones with access to the code. Obtaining the radio code takes between one and four minutes, depending on the speed of your Internet access. Most dealership service facilities charge one hour labor for this service. Is there any wonder why they want to keep this information to themselves?

Manufacturers have two information systems, and for a fee, they will allow independent repair shops to access the Technician Information Service. The other system is the Dealer Information System. I can tell you that they are not the same at all. The Dealer Information System is more complete and easier to use. The dealership service facilities also have access to tech support, which the independent repair facilities do not, again, leaving the independent at a disadvantage.

With companies like Alldata and Mitchell supplying information to the independent shop at a reasonable cost, it is the same as the Technician Information System that the manufacturer also supplies to the independent. Another difficulty with Alldata and Mitchell is the lag between getting information, publishing it, and distributing it to the shops. There can be a three to six month lag by the time the shop gets the information.

While access to information is a problem, the greater issue is that of the programming ability, or lack thereof, available to the independents. Without it, the entire repair at the independent facility is viewed as useless by the customer.

Last year, our facility spent in excess of $65,000 on manufacturer's specific scanners and we still have difficulties with some cars. These costs are not something that small independent repair shops can insure as a cost of doing business, and keep costs down to the motorist.

Chairwoman MUSGRAVE. Your time has expired. Thank you for your testimony.

[Mr. Bordoff's testimony may be found in the appendix.]

Chairwoman MUSGRAVE. Our next witness is Eddie Ehlert from Chamblee, Georgia. Welcome to the Committee. And if you will pull that microphone closer, we will be able to hear you very much. Thank you.

STATEMENT OF EDDIE EHLERT, MAZDONLY, LTD.

Mr. EHLERT. Good afternoon, Chairman Musgrave, Members of the Subcommittee. My name is Eddie Ehlert. I am President and owner of Mazdonly, Limited in Chamblee, Georgia. I have been in the automotive repair industry since 1977, and have owned my own repair facility for 20 years. I am immediate past president of the Automotive Service Association of Georgia and currently serve on their board of directors.

I am here today representing the Automotive Service Association, ASA, our national association. Our association represents 13,000 independent repair facilities nationwide employing 65,000 technicians in all 50 states. ASA is the oldest and largest trade organization in the automotive industry with the distinction of serving only those businesses that perform service and repairs for the motoring public.

Independent repairs typically receive in their shops those cars coming out of warranty. We repair approximately 75 percent of all cars out of warranty. Franchised new car dealers repair approximately 25 percent. This structure of the repair marketplace is stable now and for the foreseeable future.

The ASA testified before the House Commerce Committee's Subcommittee on Commerce, Trade and Consumer Protection on September 22, 2004, on the Right to Repair issue. Our message today mirrors our testimony of 2004. The ASA-Automaker Agreement for service information, tool, tool information and training is working.

I want to make three points this afternoon.

There is a viable industry solution already in place for the service information. Service information opportunities have expanded under the ASA-Automaker Agreement, and independent repairers want less federal government bureaucracy in their businesses, not more.

The 1990 Clean Air Act protected independent repairers in the area of emissions service information. Unfortunately, it took the United States Environmental Protection Agency 13 years to develop a regulation that it could enforce with the automakers. The act did not give the authority to EPA in the area of non-emissions information. This is the area of contention.

After a U.S. Senate Commerce Committee hearing in July of 2002, members in the House and Senate ask ASA and the automakers to try to resolve this issue prior to the next Congress.

The ASA and the automakers were successful in signing a voluntary, industry service information agreement in September of 2002. This agreement ensured independent repairers the same service, tool, tool information and training provided franchised new car dealers, including both emissions and non-emissions information.

With 451 million repairs handled by independent repairers each year, a process had to be in place for allowing any issues or complaints that might arise. An industry organization, the National Automotive Service Task Force, NASTF, is in place to address consumer, technician or shop owner complaints relative to service information.

The NASTF is an industry success sorry. Repairers, automakers, new car dealers, parts distributors, and information providers work together in face to face meetings, conference calls, and via the Internet to resolve industry issues. Of the 451 million repairs in 2004, the NASTF had 48 complaints, less than a fraction of one percent of all repairs. Of those 48 complaints, 48 were resolved in 2004.

In March of this year, ASA and the National Automobile Dealers Associations, NADA, sent a letter to every member of the U.S. House of Representatives. We are the two largest trade associations representing the repair industry segments in the United States, independent repairers and franchised new car dealers, respectively. Our association stated in this joint letter that, "NADA and ASA want to make perfectly clear to all parties, and most importantly to their customers, that they can repair vehicles because the service information and diagnostic tools needed are available to them in the marketplace."

Since the more complex vehicles have entered the repair marketplace, information availability has expanded rather than contracted for independent repairers. The Clean Air Act amendments directed EPA to regulate automaker websites for emissions service information.

The ASA-Automaker Agreement expanded this to non-emission service information, tools, and tool information and training. But in actuality, day by day, independent repairers still go to the same source for service information they have gone to for many years, third party information providers.

Prior to the 1990 Clean Air Act amendments and prior to EPA regulations, prior to the ASA-Automaker Agreement, third party information providers were available such as Alldata, Mitchell I and Identifies for their service information needs.

For those shops choosing not to directly access the automaker websites, these companies still provide service information to the independent repair technician.

Chairwoman MUSGRAVE. The time has expired. Thank you very much for your testimony.

Chairwoman MUSGRAVE. Our next witness is Aaron Lowe, Vice President, Government Affairs, Automotive Aftermarket Industry Association. Welcome.

STATEMENT OF AARON LOWE, AUTOMOTIVE AFTERMARKET INDUSTRY ASSOCIATION

Mr. LOWE. Thank you. Good afternoon. My name is Aaron Lowe and I am vice president of government affairs to the Automotive Aftermarket Industry Association.

The AAIA is a Bethesda-based trade association with more than 7,566 member companies and affiliates that manufacture, distribute and sell motor vehicle parts and accessors. AAIA represents

more than 54,000 parts stores and repair shops nationwide. Many of these shops are family-owned operations and have been in business for generations.

We are placed to be here to discuss the Motor Vehicle Owner's Right to Repair Act that was introduced by Representative Barton. Passage of this legislation is critical not only to the thousands of small businesses that comprise the automotive repair industry, but also their customers who depend on local repair shops to keep their vehicles operating safely, cleanly and dependably.

I will not go over the history of this legislation since I think you made some really good points, but as you said earlier, the bill was brought about because of the expansion of the use of computers beyond just emissions-related items, to brakes, air bags, entertainment systems to anti-theft systems.

The computer chips control virtually every aspect of the vehicle. No longer is it just enough to have information on emissions-related items, you need information on computers impacting all aspects of the vehicle.

A little over one year following introduction of the Right to Repair bill in 2001, the car companies issued a letter promising to make emissions and non-emissions-related information available by August 31, 2003.

Clearly, this letter was a major step forward for the aftermarket in that it was the first time, short of regulation, the manufacturers had ever promised to make any information available to our industry. However, the promises of the car companies, while progress, do not go far enough to either resolve our current issues or ensure a future of the competitive repair market.

Our central issue with the letter is that it is not enforceable. Should any of the car companies determine to walk away from it, there is nothing the industry could do or the car companies to hold them to their promise.

Today, you have heard only a few of the specific instances where critical information is being withheld by the manufacturers. These examples and others that have been brought to our attention call into serious question the car company performance in meeting their own promises.

A recent survey of repair shops performed by the Tarrance Group found that 59 percent of respondent had problems getting access to repair information and tools needed for repairs. Sixty-seven percent reported that they had been forced to send their vehicle back to the dealer. Ninety-three percent of the respondents that said they wanted the Right to Repair bill were ASA members.

Our further concern is the National Automotive Service Task Force that was cited in the letter as the enforcement entity for the promise. By nearly any objective measure, NASTF is an enforcement group, but simply a clearinghouse for information requests from the technicians that are routed to the responsible car company. Once there, it is up to the car company to decide how to answer.

NASTF as a entity does not force nor negotiate resolution on behalf of the independent technician. And in April 22, 2005, letter to Kirland & Ellis that represents the vehicle manufacturers, FTC stated for a third party review system to be effective they must be

impartial and objective, be public, and apply standards consistently.

Clearly, NASTF is neither impartial nor objectives since it is operated and controlled by the vehicle manufacturers.

I have to add that because of the time it takes, which is eight to 15 days by NASTF's own testimony at the Energy and Commerce Committee, most independent repair shops cannot wait that long to get the information to get their customers out the door.

The bottom line is that while promises helped move the ball forward, our industry cannot rest its future on them without some hammer to ensure everyone stays at the table. Car companies have racked up a long track record of withholding needed information and tools, and they make too much money in the aftermarket to accept anything else.

According to the NADA, National Automotive Dealers Associations, even though dealership parts and service departments comprise just 11.8 percent of typical dealer's total sales, it contributes 48 percent of total operating profit. New car sells make up 60 percent of total sales, but only contribute 35 percent of total profit.

Our fear is that the marketing and competitive interests of the manufacturers will override their current promise to make information and tools available should the threat of legislation disappear.

The Right to Repair legislation was revised this year, but the goal is the came—ensure car companies keep their promises that they made in their letter, to make all information available.

Over the past couple of months we have worked hard with the Federal Trade Commission to make sure it is easily implemented and fair to the car company. Particularly important, the newly drafted bill provides significant protection to the car companies trade secrets.

During last year's discussions, the car companies thought that this is was parts bill because it would require the use of trade secrets. I want to be clear that it has never been our intention to have any parts information, and we have provided clarification in the current bill to make sure that is true. Only information that they provide to the new car dealers must be made available to the independent aftermarket.

We hope that this legislation will not add to the regulatory burden but just simply expand what has already been done in the emissions-related information by EPA be provided to the independent aftermarket, and that the non-emissions-related would also be included on those websites.

Thank you.

[Mr. Lowe's testimony may be found in the appendix.]

Chairwoman MUSGRAVE. Thank you. Our next witness is John Cabaniss, Jr. of the National Auto Service Task Force, and welcome to the Committee.

STATEMENT OF JOHN M. CABANISS, JR., ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS, INC.

Mr. CABANISS. Thank you. My name is John Cabaniss. I am testifying for the Association of International Automobile Manufacturers.

I have been with AIAM for 10 years. Prior to that I worked for EPA for 15 years, and I began my experience working on cars in my dad's auto shop when I was 11 years old. For five years, I have been the chairman of the National Automotive Service Task Force.

The U.S. auto industry is highly competitive, more so today than ever before. About 70 to 80 percent of all non-warranty vehicle service is performed in independent shops. Because of this, automakers must respect the aftermarket industry as their partners in ensuring customer satisfaction and protecting brand loyalty. To do otherwise would be contrary to their own interests.

Let us review some of the proponent's claims.

First, the proponents claim modern vehicle technology is limiting consumers' choice for vehicle repair and service. The reality is consumers continue to have the choice of where to get their vehicles serviced and repaired. Independent shops continue to provide quality services at competitive prices, performing over 400 million successful repairs annually.

Internet and e-commerce technologies are being used today to provide these shops with the latest technical information faster and cheaper than ever before.

Second, the proponents claim automaker service websites do not include complete information. The reality is automakers are doing all that they reasonably can to make the same service information, training materials and factory tools available to independent shops as to dealers.

All automakers have service websites containing service and training information available 24 hours a day, seven days a week.

Is every manufacturer's information perfect? Of course not. There are millions of data points and from time to time something will fall through cracks. Like any complex data network, improvements are continually being made to benefit dealers and independents alike.

Third, proponents claim automaker service websites are too expensive. The reality is nearly all automaker websites are available for a period of 24 to 72 hours for 10 to 20 dollars. Frequent users have the option for monthly or longer subscriptions, but obviously they have to consider their own business case whether to take advantage of that.

Fourth, proponents claim the voluntary approach provides no enforcement to ensure continued good faith of automakers.

The reality is the continued good faith of automakers is ensured because the marketplace requires it. Automakers must ensure that customers can get their vehicles repaired at the shop of their choice. Due to fierce competition, automakers cannot afford any bad press that would result in not providing full support to customers, dealers, and independent shops.

Fifth, proponents claim using the NASTF complaint process takes too long.

The reality is in virtually all cases shops are getting the information they need, when they need it, on a 24/7 basis from either automaker websites or independent providers. In 2004, NASTF received 48 complaints. This is obviously a very small number compared to the 400 plus million vehicle repairs conducted annually.

Most NASTF complaints are handled quickly, but a few take longer because they require updating documents or making tool changes. Automakers strive for continuous improvements of their websites, just as they do their vehicles.

Sixth, proponents claim legislation and regulation are needed to ensure automakers continue to provide information and address the problems they have identified.

The reality is the types of problems identified by proponents, such as the cost of accessing sites, differences in sites, occasional content errors, and lack of enforcement, are not issues which will be effectively addressed in regulations by the FTC or any other agency.

The current cost structure in websites are based on EPA's current regulations, and approved by EPA, and there is no reason to believe the FTC would conclude any significant changes are needed, and federal regulatory processes are laden with procedural steps that do not lend themselves to addressing problems quickly.

As noted by the FTC in a recent letter to Representative Dingell, self-regulatory programs are often the best ways to address matters. This is especially true in a dynamic area such as information technology. The only thing that federal regulation would clearly do is slow down the process and delay further progress. This outcome benefits no one, not the service industry, not the automakers, not consumers.

In conclusion, automakers remain committed to the National Automotive Service Task Force. We welcome the participation of all parties to improve and expand this voluntary process. Bringing everyone's efforts and resource to bear on producing results, not rhetoric, can only improve the process.

If any members of the Subcommittee are contacted by constituents with any type of service information, question or problem, please contact me so we can address the issue.

For the record, we oppose H.R. 2048 because we believe it is unnecessary and counterproductive. We acknowledge that there have been some modifications to this year's bill, but we continue to have concerns about the protection of intellectual property and the potential for excess litigation.

Thanks for the opportunity to address the Subcommittee.

[Mr. Cabaniss' testimony may be found in the appendix.]

Chairwoman MUSGRAVE. Thank you. Our final witness is Kathleen Marvaso. Welcome to the Committee.

STATEMENT OF KATHLEEN MARVASO, AAA

Ms. MARVASO. Thank you. Good afternoon, Madam Chair and Members of the Subcommittee. I am pleased to be here today to testify on behalf of AAA, and provide testimony in support of the Right to Repair bill.

I am Kathleen Marvaso, the managing director of AAA's Washington office, where we advocate a wide range of consumer and safety issues that affect the traveling public's safety and mobility. AAA has represented the interests of car owners for more than 100 years, now serving more than 48 million members, 25 percent of all U.S. households.

The AAA has a strong interest in the Right to Repair legislation because we believe it is necessary to ensure our members' safety, and their access to high quality, convenient and competitively-priced auto repair.

The AAA's goal has always been to ensure that manufacturers make service and training information and the appropriate diagnostic tools available to any repair facility, not just those in their franchise dealer network.

Ideally, this should occur voluntarily. Yet our members and independent repair facilities in our approved auto repair network continue to tell us that there are many instances where technicians do not have the information or tools they need to fix today's vehicles, and as a result consumers are denied choice among qualified repair options. Often they are inconvenienced, and some AAA members are left with no choice but to drive their vehicle long distances for repairs.

Too often today's consumers are essentially denied something that they buy when they drive off the lot with a new car—access to the data necessary to get that vehicle repaired.

So AAA supports the Right to Repair bill for three important reasons: consumer choice, vehicle safety, and the right of car owners to access the data generated by their vehicle.

Despite some positive steps towards making the information available to independent repair facilities, it is AAA's understanding that much of what is provided is incomplete, it is difficult to find, or it is prohibitively expensive. So instead of fixing the problems themselves, repair technicians are forced to put customers back out on the road searching for a dealer shop that may not have an available appointment, it may not be nearby, and it may not even be open.

Many of our AAA members prefer dealer shops, but many also choose to use the services of independents, and AAA believes that our members deserve and need choice to ensure good quality service, and competitive prices in auto repair. This can only occur if all facilities have access to the same information and tools.

Technology has made the vehicles that we drive smarter. More than 80 percent of the systems on some cars are monitored or controlled by a computer. They tell us about the need for an oil change, trouble with an oxygen sensor, problems with the brakes, and even if our tire pressure is too low before there is a problem or a critical safety breakdown.

It makes sense that information necessary to diagnose and repair any of these problems should be available to all repair technicians. But these days it is hard to mention this issue without someone telling you of their own experience with a repair problem. Depending on the problem, whether it involves a critical safety feature like brakes, or the supplemental restraint system, or a comfort features like climate control, at best these problems amount to an inconvenience, and at worst, there are a serious safety issue. Regardless, they should not happen.

The AAA believes that when you drive off the lot with your car you own more than just the vehicle. You own the information necessary to have it repaired by a trusted service advisor of your choice, whether that is an independent or a dealer.

Opponents of this legislation claim that an information not released to the independent repair shops is withheld to protect intellectual property or design secrets. AAA members do not want access to any of that. They want their car fixed.

Simply put, this legislation is about putting common sense into the repair process, ensuring that customers get a choice in auto repair, whether they choose a dealership or an independent.

Thank you for the opportunity to share AAA's views on this subject.

[Ms. Marvaso's testimony may be found in the appendix.]

Chairwoman MUSGRAVE. Thank you very much for your testimony.

Mr. Shuster, do you have any questions for our witnesses?

Mr. SHUSTER. Yes, I do.

First, I want to start off again, I have spent probably the better part of 30 years of my life involved with auto repair, and in an auto dealership selling cars, around cars. I also want full disclosure. I could not fix a car if my life depended on it. But I have been around and I have been managing businesses that have done that some time.

I also want to say that Mr. Houska and Mr. Bordoff, I have the greatest respect for what you do. I know how difficult it is. You know, I have been there when a trained mechanic or we thought it was a trained mechanic, we thought the part was there, and the car did not get fixed, and I have got a customer yelling at me why is my car not fixed. You guy do not know what you are doing.

I mean, I have been there, and I feel your pain, and I have felt it.

I do have a concern, though, about this legislation. I think it is the wrong way to go. I think it—as independent business people, as you are, as I was, small business people, we do not want the federal government sticking their nose into our business, because this just leads from one thing to the next.

I mean, what is to stop us from the next thing saying, okay, if you want to do these repairs, you have got to buy every Chrysler, every General Motors, every Ford tool and diagnostic piece of equipment out there.

I mean, it is a huge expense, and I do not think either of you want that to happen. You probably do not have all of those tools, because I had quite a few of those tools, and lots of times we did not use those tools, but we still had to buy them.

So I am concerned about this for that reason. What is the next steps?

Also, when we look at the market, 75 percent of the repairs are being done today by independent repair shops. It does not seem to me that the auto dealers have a monopoly on that business.

Also, I saw where—I know that there is claims that there is a lot of people complaining about the dealership not giving up the information, they cannot get their cars fixed at your place or the information is not fast enough. But I know the task force, the numbers I have, there is only about one percent complaints coming in from repair shops that say they cannot get the information.

So to get to my question, who makes up CARE? I think know. I think is it NAPA and Auto Zone and big parts manufacturers and

distributors like that. Is that correct or is that not correct? Who makes up CARE? I know there is a lot of small, independent dealers.

Mr. Lowe, maybe you can. I know AAIA, that is who you folks are, is that correct?

Mr. LOWE. Yes.

Mr. SHUSTER. And are you part of CARE?

Mr. LOWE. We work with CARE on the legislation. We all support the bill. We have some of the same members.

Mr. SHUSTER. Okay.

Mr. LOWE. CARE is one group who is supporting the bill. They are made up of—you know, as you said, NAPA, and Auto Zone, and companies like that. We are also comprised of some of the same companies. We also have other service facility members of AAIA. We have parts manufacturers, distributors.

So, I mean, CARE is just one group that represents this bill, and is working on it along with a lot of other groups that are supporting this legislation.

If you look at the range of support for the bill, it covers a wide range of the aftermarket.

And to address your other issue about your concern about the federal bureaucracy, none of my members want to see federal bureaucracy more than we have to. Our members are staunchly anti-regulatory in nature. But we have had regulations in place by the Environmental Protection Agency for years on service information, so we have already developed an infrastructure for making that information available and for how the regulation works.

There has never been any challenges on intellectual property as part of the implementation of that legislation. So we already have that in place. And I think it is important to remember that we did not get as far as we have with information because of the market forces. It is because of the information regulations in the Clean Air Act, and then the threat of this legislation coming into place that really moved us as far as we have come on service information.

So we would love to be able to not have to deal with legislation. We are hoping that when the legislation passes we will never have to have regulatory enforcement action; that the car companies will come and work with us to get the information out there. But we do not feel comfortable without having some kind of hammer to make sure that they stay at the table, and work toward getting information to the industry.

Mr. SHUSTER. But again, the information I have is that they are working with you. It is not perfect. It is never going to be perfect because of the nature of what we do is fix cars and it is a very difficult thing to do at times, but it is not out there.

But I still see things that raise a red flag to me when you are out there touting to Wall Street that this legislation may pass. That sounds to me like you are looking for the investors to invest in your stock because of government action. I do not have the actual clipping of the Wall Street report saying you are touting this act coming forward. That is going to be of great benefit to the NAPA, the NAPA franchisees, the Auto Zones and those big companies.

I look at the market and I see you have got 75 percent of the businesses coming your way now. Again, I do not think this is the right way to go. I think that go back and work, get in there with the auto manufacturers, and sit down with them, and let us see it work in the private sector. Let us not see the government pass a legislation that I think in the end is going to come back to haunt all of us.

Chairwoman MUSGRAVE. The time has expired.

Mr. Lipinski, do you have questions?

Mr. LIPINSKI. Yes, Madam Chairman.

Chairwoman MUSGRAVE. You are welcome.

Mr. LIPINSKI. Thank you, and thank all of you for your testimony here today.

It seems like there are three major issues of contention. One is how well would the voluntary system—how well is the voluntary system working. The second one is will there be intellectual property concerns, should there be intellectual property concerns with a mandatory system, such as the one in this bill. And the third one is will we have problems in the interim? If we pass this, and make it mandatory, what would happen to the voluntary system?

So let me just start with the first one, that is maybe all that I really get to here, but it is probably the most important one because we heard Mr. Ehlert state that there are 48 complaints to NASTF last year. All of them were resolved. Only 48 complaints, and NASTF reports more than a 99 percent rate of accessed information.

So I would ask whoever wants to respond to this, Mr. Bordoff, Mr. Houska Mr. Lowe, is there a problem? What is wrong with that data? That data seems to say that there is not a problem with the voluntary system. What is wrong with that data?

Mr. BORDOFF. Well, one of the problems is that when you are stating the number of complaints, most of these automobile repair shops are small, three, four, five employees on a street corner. They do not either to complaint or they do not even know how or who to complaint to. So the problem is a lot larger than the number of complaints.

You mention is it really necessary since it is being done voluntarily. Some car manufacturers are doing it better than others, so what we are having, and Chairman Barton said it, we are having a bigger problem with the foreign companies than the domestic companies, so that we can take care of some cars, but not others.

Congressman Shuster said 75 percent of the repairs are done outside. That is true, but 75 percent of the repairs are done low tech, and 75 percent are done on older cars. And as the cars are becoming more complex, more computerized and the newer cars are coming in, that 75 percent number unless we get help is going to drop to 60, 50 and even less than that in the future.

Mr. LIPINSKI. Mr. Houska or Mr. Lowe, is there anything? You do not have to add anything.

Mr. HOUSKA. Also, a lot of repair shops do not even know there is the system to report. ASA knows about it, but a lot of shops are not ASA members.

Mr. LIPINSKI. What about the 99 percent success rate that is reported?

Mr. HOUSKA. Well, you have to wonder why there is only 48 complaints in the whole country. There is something wrong with that system of reporting if that is the only number of complaints you get.

Mr. LIPINSKI. Well, let me ask Mr. Ehlert to respond to that.

Mr. EHLERT. Repeat the part you want me to respond to.

Mr. LIPINSKI. Well, I just want you to respond to their arguments, Mr. Bordoff and Houska, about that there are problems, and one of the problems—we have this low number of complaints as you stated, but they do not know how to complain or who to complain to, or it is difficult to complain.

Mr. EHLERT. Well, the system has been as heavily publicized as it could possibly be over the last two plus years since it has been in place. It functions very well at my shop. I do not have these problems, and I primarily work on foreign-manufactured vehicles, and I have full access to the stuff I need.

On the other hand, I do not need the entire bid stream of an engine control unit in order to repair that vehicle. I do not need to know every bit of software that was programmed into it. And I have access to the information that I do need to make that repair, so I am not running into these brick walls that I am hearing about.

I do not know what preparation steps the shops that are having the complaints have not taken, but the information for me is completely available.

Mr. LIPINSKI. Let me ask—change very quickly. Mr. Cabaniss, you had mentioned Chairman Barton here said they have changed the bill to protect intellectual property. What concerns—you raised concerns though in your testimony. Why do you think this bill does not protect the intellectual property rights?

Mr. CABANISS. Well, the problem with the bill as it is currently written is that there is still some ambiguities there, so we are not sure which part to read one way and which part to read another way.

For instance, there is some language that says that trade secrets are protected, but there is also language in the bill that is somewhat vague. It says "No information necessary to repair vehicles shall be withheld by a manufacturer if such information is provided directly or indirectly to franchised dealerships or other facilities."

The problem there, the word "indirectly". Manufacturing, design and repair processes are all integrated, so where do you draw the line on what is protected and what is not protected?

These kind of ambiguities that are in the law give us concern because we do not want to have to go and fight plaintiffs in courthouses all across the country where they are challenging trade secret issues.

Chairwoman MUSGRAVE. The time has expired.

We are advocates of small business, and one thing that we always have before us though is what is best for the consumer, and I would like a proponent of the bill to say why passage of the bill is the best thing for consumers, and an opponent to give their case as to why it would not be good for consumers if the bill passed.

Would a proponent go first?

Mr. BORDOFF. Without going into a long thing here, again, we need rapid repair for the consumer, and when he has to wait, espe-

cially now with the warranties of these new cars are getting longer and longer, some are up to 10 years and 100,000 miles, four years, 50,000 mile warranties are becoming very common. Chrysler has gone to seven years, 70,000 miles. The dealership are getting busier doing warranty work, which they have to do. Warranty work is not allowed to be done on the outside.

So as they are getting busier, it is getting harder and harder for the consumer to get his car in for a repair that is not under warranty. So again, it is the time it is going to take the consumer if he cannot bring it to his local shop to get repaired. And we are trying to cut this off before the problem really becomes bad.

As the cars, again, become more complex, this problem is going to get worse. Right now most of the repairs are low tech repairs, brake repairs, and that is why you are not seeing the complaints, and most repairs are successful.

Chairwoman MUSGRAVE. Thank you. Now an opponent of the bill, please?

Mr. CABANISS. The auto industry is all for consumer choice. We support wholeheartedly the consumer having the choice of getting their vehicle fixed anyplace that they choose, and that is why we support working with the aftermarket for solutions.

Given the volume of information that is involved in covering 600 models or so that are sold each year there is an extensive amount of effort and resources on the part of manufacturers needing to make this information available. If we introduce bureaucratic processes into this, the outcome will simply slow down the process by diverting manufacturers' attention and resources away from solving service problems and instead dealing with regulatory matters.

Our experience also indicates that regulatory processes tend to create adversarial relationships among the parties rather than supporting and working cooperatively together, which is what we need to reach—to identify any problems and work toward resolution. We need a voluntary cooperative process, which we have in place today with the NASTF.

We do need the support of other organizations. Right now we have over 100 organizations involved in that process, but many of those choose not to participate fully for one reason or another.

What we need to keep consumers happy, and believe me, the auto manufacturers are all for having happy consumers, making sure that they have good driving experiences, and come back to the showroom the next time around to buy the next car. So you know, that is what we need to keep consumers happy is a good system that works.

Chairwoman MUSGRAVE. Thank you very much.

Mr. Udall?

Mr. UDALL. Thank you, Madam Chair.

When the Clean Air Act amendment was passed in 1990, it took five years before any regulations were promulgated, and then it took 13 years before they were finalized. As you heard Chairman Barton testify before you, he said that if his bill was enacted, it would take away the voluntary system that is in place, and he was urging that the voluntary system come in place, but he said if the law is passed, then the voluntary system goes away.

My question to any of you that are willing to answer it here is if this bill were to pass the current voluntary system under the National Automotive Service Task Force goes away, how would independent repair shops get any service information?

I mean, we are going to have a long period of time to get this up and running. Please, anybody.

Mr. LOWE. May I comment on that?

Mr. UDALL. Yes, please.

Mr. LOWE. I think it is important to remember that the legislation really mirrors the promise that the vehicle manufacturers made to make all their service information available. So if the bill passes, they do not have to necessarily just stop making information available. That information as they promised should still be enough to comply with the legislation.

So in reality, when the bill passes nothing really changes if they do what they say they are doing.

The issue really gets to the car companies that are not complying with the promise or who are not putting their effort into making information available. They are the ones that would have something to worry about.

So those that are now doing their best to get information out there, and some are doing a much better job than others, they will be able to continue to do that.

One other issue I just want to address is the issue of the testing of the lawsuits that NASTF representative brought up. Since the Clean Air Act has passed and the information availability regulations were enacted, which were actually in 1995, and they were revised recently, there has never been any challenges, legal challenges by the car manufacturers to some of the requirements. There have not been court battles.

This has gone through—this information is out there, and it has worked. It is not perfect. There are problems, but it has worked.

So I really take issue with that statement that there are going to be problems with this bill passing. I simply think it will make sure that everybody does—lives up to their promise.

Mr. UDALL. Any—yes, please.

Mr. EHLERT. Currently, the system we have in place is here because of voluntary business agreements. If the legislation were to pass, there is no reason, there is no mechanism within the voluntary agreement for it to continue.

If I were to lose information access today, it would be disastrous. Previous to 2003, I had a large room in my shop dedicated to original equipment manufacturers' manuals. I do not have to keep those anymore. Any questions that come up are readily available on each of my technician screens as they are needed. That has been a substantial improvement in the efficiency of the operation of my business.

Without that information, I could go out of business.

Mr. UDALL. Do any of the other panelists have comment on those issues?

Mr. CABANISS. I would add that with regard to EPA's regulations being in place for the past period of time the regulations came from the Clean Air Act, as was explained at the outset of the hearing. The Clean Air Act has just a couple of sentences in it about service

information. It does not have the pages and pages of language that is in the H.R. 2048. And when you have pages and pages of a language it causes a number of issues when you have the vague pieces, an example of which I provided earlier.

The interesting thing is is that today the automakers are all, everyone of them, there are no exceptions, are providing information for non-emission systems on the same basis as EPA's regulations require it for emissions-related information. Therefore, we do not understand how there is—why there are these complaints about the lack of information being available.

It is available bumper to bumper for the car on the service websites of the auto manufacturers. So we do not understand what there is to be gained by this legislation other than to establish a bureaucratic process that will simply cause delay after delay. It took EPA 13 years to get that second rule through after the Clean Air Act. So it just makes no sense to us to have that kind of situation repeat itself.

Mr. UDALL. Thank you.

Chairwoman MUSGRAVE. The time has expired. Thank you, Mr. Udall.

Thank you, witnesses, for your testimony today. We appreciate it very much, and this hearing is adjourned.

[Whereupon, at 3:35 p.m., the Subcommittee was adjourned.]

How the Clean Air Act Affects Auto Repair
Subcommittee on Workforce, Empowerment
& Government Programs
June 28, 2005
311 Cannon
2:00 pm

Good Afternoon and welcome to the Workforce, Empowerment and Government's Program Subcommittee. Today's hearing will focus on "How the Clean Air Act Affects Auto Repair." I appreciate everyone's participation in this hearing, particularly those who have traveled great distances to get here.

When the Clean Air Act of 1990 was passed, it included a provision that required automobile manufacturers to provide an "On-Board Diagnostics" system to monitor emissions. Carmakers were required to share this information to facilitate repair diagnoses pertaining to emissions.

No other vehicle systems were subject to the disclosures mandated by the Clean Air Act.

However, as more systems on our cars became electronically controlled, some independent repair shops began reporting difficulty in acquiring information to diagnose other computer controlled systems within vehicles.

Today, automobiles have several complex computer systems that control braking, ignition, security, steering, emissions, safety and climate-control. As a result, the information and expertise needed to diagnose and repair them increases dramatically.

It is estimated that most newer vehicles have a minimum of 15 separate computers on board.

This hearing will focus on HR 2048, "the Motor Vehicle's Owner Right to Repair" bill introduced by Representative Joe Barton. I appreciate Chairman Barton coming here today to offer his testimony before this Subcommittee on his bill.

U.S. consumers spend almost $200 million to maintain and repair the two hundred million cars on the road. The American economy also benefits from a competitive aftermarket industry that provides jobs to more than five million workers in almost 500,000 predominately small businesses and generates more than $200 billion in sales annually.

I look forward to receiving testimony from our other witnesses as well. It's important to hear the perspective of all parties affected by this issue. Whether they are franchisees, independent repair shops, or dealership owners, all of them have one thing in common- they are all small businesses.

I now recognize our distinguished Ranking Member on the Subcommittee, Representative Lipinski, for his Opening Statement.

Opening Statement of Congressman Westmoreland
June 28, 2005
Small Business Committee – Workforce, Empowerment, and Government Programs
Subcommittee Hearing on: "How the Clean Air Act Impacts Auto Repair"

Thank you Madame Chairwoman for holding this hearing today and I appreciate the willingness of all the witness to testify.

I think it says a lot that Chairman Barton is before us today and I appreciate and respect his efforts on behalf of this legislation but I do have some questions.

It's nice to see that we have someone from Georgia before us today – welcome Mr. Ehlert.

I've met with representatives from most of the organizations and associations present today and I must admit, something isn't quite making sense about this whole thing.

I haven't heard from any of my constituents on this issue, but I've certainly heard from people that live in Gainesville (which is Congressman Deal's district).

And let me tell you about these phone calls – I'm not sure what you call this practice, but it's when a third party phone bank organization calls a member of a certain association and offers to connect them to their representative and tells them what they should say – that's money well spent…

Most of the calls we did get – again, they were getting connected to the wrong office – the person on the other line was confused, uninformed and most of them wanted to know why our office called them – go figure.

I don't see the effectiveness in that practice.

Anyways, there are lots of disparities in the stories I've heard so far and I hope that today we will find some answers and get to the root of the issue.

I'm going into this hearing with an open mind, but the main thing that bothers me is creating a new federal bureaucracy for a problem or issue that from my understanding already has a private sector mechanism that is in place and working – albeit not perfect, but that's what we are here to discuss today.

Thank you.

STATEMENT BY THE HONORABLE JOE BARTON
BEFORE THE
HOUSE SMALL BUSINESS COMMITTEE
SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT
AND GOVERNMENT PROGRAMS

JUNE 28, 2005

Good afternoon. I want to thank Chairwoman Musgrave for holding this important hearing today on information availability and access for the automotive aftermarket repair industry. I am the sponsor of HR 2048, the "Motor Vehicle Owners' Right to Repair Act," which I recently reintroduced along with Congressman Towns and Congressman Issa.

I have been involved with this issue since August of 2001, solely on the principle that I believe consumers need to have choice in auto repair, whether foreign or domestic, and they should be able to choose where they have the vehicle repaired and whether they choose aftermarket replacement parts or Original Equipment Manufacturer (OEM) parts. This legislation is supported by AAA, NFIB, The Retail Industry Leaders Association, and the 60 Plus Senior Citizens.

The legislation has one purpose --- putting vehicle owners in the driver's seat when it comes to choosing where to have their car repaired. It is not about gaining proprietary information or trade secrets, as some

suggest. That argument is easily resolved by reading my legislation. In fact, automakers currently comply with an EPA rule that requires service and diagnostic information for emissions related repairs, which is written in a way that does not require them to release proprietary information. I believe the same framework could work for non-emissions repair information.

Much of the testimony you will hear today examines the progress made on a voluntary industry agreement. This agreement exists chiefly because of a hearing on the "Right to Repair" issue held by Senator Dorgan in July 2002. That hearing, and the fear that the late Senator Wellstone's companion legislation would be moved, persuaded the automakers (the Alliance and AIAM) to broker a deal with a smaller group of service providers, known as ASA.

The voluntary agreement, reached in September of 2002, set a deadline of August 31, 2003, when all information necessary to diagnose, repair and service vehicles for both emissions and non-emissions related repairs would be made available in the same manner and to the same extent as it is to franchised dealerships. However, this agreement did not alleviate the primary concern of a larger group of aftermarket repair folks, known as the CARE coalition. Their concern is that this is a voluntary agreement and not enforceable.

While I do not doubt their good faith efforts to do so, it is apparent that the Alliance and AIAM – which are trade associations – cannot, on a voluntarily basis, compel these companies to do what is in their own agreement. What is the recourse for independent repairers and consumers, or the penalty for the automaker, if they break their word to honor the agreement?

I appreciate the efforts the automakers have made to use the NASTF process as a conduit for independent repairers and the various automakers, however, it is simply not practical and not realistic to think that a consumer is going to wait 8 to 15 days (based on NASTF's best and average response time) for an independent repair shop of their choice to get the adequate information to repair their car. Sure, they may eventually get the information – but it will most likely be a moot point. We all know as consumers, when our car breaks, we need it fixed and back within a day or two. I question why it takes so long, and why independents have to go through this process – when dealers do not. This does not fully meet the requirements of the voluntary agreement as independent repair shops are not being treated in the same manner as franchised dealerships.

The testimony from AIAM and ASA indicates that there is no need for legislation and the voluntary agreement in place is sufficient. I believe

any voluntary agreement must have accountability, and the FTC agrees. With regard to self-regulatory programs, the FTC has stressed the need to back up internal mechanisms of individual companies with third-party review systems.[1] In the very near future, I will ask the automakers to consider a proposal for an independent, third-party arbitration and dispute resolution panel. I am interested in brokering a lasting solution that satisfies all parties. If this cannot be achieved, I will reluctantly move my legislation.

Thank you for inviting me here today to testify. I appreciate Members of this Subcommittee examining this important issue on behalf of small businesses and consumers across the country.

[1] From a letter dated April 22, 2005, to Robert R. Gasaway, Esq. of Kirland & Ellis, LLP, from the Federal Trade Commission regarding the FTC's views of what constitutes an effective self-regulatory program.

Madam Chairman, Members of the Subcommittee, I am Dennis Houska, President of Houska Automotive Services Inc. located in Fort Collins, Colorado. Thank you for the opportunity to address you today on an issue that is vital to my business. . My father started our auto repair shop over fifty years ago in a small two bay garage. I am the second generation in the business and my son will be the third generation. I have grown up in and spent my whole life in the auto repair business. Our shop has grown over the years to a 24 bay facility that works on all types of vehicles. Houska Automotive now has twenty-five employees. We pride ourselves in being a one-stop auto repair for all of our customer's needs. We have built a base of loyal customers because of our quality service, convenience, and competitive price. But, even more important, based on trust.

Our shop has many business affiliations. We are an AAA Preferred Auto Repair, AC Delco Service Center, Bosch Repair Center, and a member of the BBB. I have been a member of ASA for many years. (Even though I am member of ASA, I strongly disagree with their opposition to this bill. For some reason, they don't believe there is that bad of a problem in getting timely information, but my years of experience says otherwise). We are also a NAPA Auto Care Center since the implementation of the program. To be a NAPA Auto Care Center you must employ ASE certified technicians, have an on-going training program and adhere to NAPA's code of ethics. I am also a member of a Bottom Line Impact Group. This is a collection of independent auto repair businesses from around the country that get together to discuss automotive management problems and the future of our industry.

We have technicians who are specialists in the different areas and makes of automobiles. Our technicians are ASE certified (most are master techs with L1). Many of our employees have been factory trained in different makes of cars. We have ongoing education through classes offered by NAPA, AC Delco, Automotive Training Group Inc., Car Quest, Bosch, our state education programs and even through ASA. We also have on-line and N.I.A.T. self study courses available. Several of our employees have received the Top Tech Award in our community for their commitment to further their education in our field. Each employee is required to continue his or her education every year.

Being an independent auto repair small business owner has great rewards and sometimes great challenges. But one challenge that I believe is unnecessary is the challenge of accessing all the information in all the model lines of all the different manufacturers. This challenge can be overcome by the passage of the Motor Vehicle Owner's Right to Repair Act.

There is no one diagnostic tool that gives us enough information for all the makes. Several years ago we made the decision to invest in the scan tools of the different manufacturers, at a large expense to us. the information was accessible for the tool manufacturers they would be able to develop and produce one tool that could access and reprogram all the different makes of cars., saving us and our customers a great deal of added expense. We have purchased the Snap-On scanner, Master Tec, Tec 2, Val Tech, Pro Link, Genisus, and NRS tools. Not only do we have the initial cost of each tool and

yearly updates, (at a great expense to us) but the manufacturers change scan tools every few years. This requires us to continually purchase more scanners for each individual manufacturer. But this is not the main reason I support this bill. Tools are a part of the challenge, no doubt. But the main challenge and one that if left uncorrected, could put me out of business is information.

We subscribe to several information systems. We have Alldata, On-Demand, IATN, and Identifix. We also use several "hot lines" which we call when we need more information. These are great resources, but there are times when more precise information is absolutely necessary to properly diagnose and repair the vehicle.

Even though we have educated employees, factory scan tools and a network of information systems, we still need better and quicker information and we need information that is kept from us by the manufacturers in order to repair our customer's vehicles in a timely manner. The future of our business depends on it and our customers' safety and their pocketbooks depend on it.

What hope does the consumer have who wants to repair his own vehicle? Our customers deserve the option to have their vehicles serviced and repaired where they want. This should be the customer's choice and not the auto manufacturer's. We are getting information on emission and engine controls. I understand this is largely because of previously passed legislation on this issue that became law in California, but we are lacking full and complete information on other vehicle systems. For example, we have

had to take Volkswagens back to the dealer to have the radio recoded because of a dead battery. You can imagine what the customer would think of that. Just to change a dead battery, we had to take the car back to the dealer or the radio would no longer work. This is a common problem with many makes of vehicle. In another incident, we had to take a Volkswagen to the dealer to have the key immobilizer reprogrammed. Imagine a customer. They might think something like, "you can fix my car, but then it won't start?" I can't imagine what a shop in a more rural area would do if there were no dealer for hundreds of miles. We had a 2001 Maxima that we had to have the ECM recalibrated by the dealer when an airflow sensor was replaced. Sometimes the wiring diagrams do not give enough information on what is happening inside a control unit. If we could access information as to the logic inside the control units, time required to diagnose problems, such as shorts, would be less. This causes extra cost and time for the customer and for us. We even had trouble finding information on how the climate control works in the different modes on a Buick. Back to the dealer. To code an ignition key for a Chrysler was another trip to the dealership. When you call a manufacturers help line, it can be days to get a return call. Our customers don't have days to wait for information that may never come. We have almost stopped using the manufacturer's lines except on extreme situations. They are nearly worthless. I have heard complaints from users of the manufacturers' web sites. Some of the websites are costly and very hard to maneuver. It can take hours and hours to navigate the site and get a download. Time is money to the customer and to the repair shop. Some like to tout the NASTF site as a solution. I have had technicians attempt to navigate that site and it takes so long with no results, we end

up having to turn away that business. Businesses won't last long if they are forced to turn away business.

As a small business owner, I believe in a level playing field. I compete and succeed by offering service excellence, value and trust to my customers. But there are those who want to allow a type of monopoly in auto repair by giving dealers full access to repair information and keeping independents out of the loop. But, if the car owner truly owns their car, it should be their decision who repairs it. Car owners should own the whole car – including the repair information contained inside the computer systems of the car. Only then will we maintain a full and fair competitive marketplace for small businesses like mine.

I am in favor of the Motor Vehicle Owners' Right to Repair Act. I am concerned that my son's future as the third generation in our family business, can be jeopardized by the auto manufacturers refusal to disclose needed information to car owners and the repair shops they choose. Thank you, Madam Chairman, for hearing this issue.

1532 Pointer Ridge Place,
Suite F
Bowie, Maryland 20716
Phone 301-390-4405
FAX 301-390-3161
Email ssdaat@mindspring.com
Website www.ssda-at.org

Testimony of the

Service Station Dealers of America and Allied Trades

Submitted to the House Subcommittee on

Workforce, Empowerment and Government Programs

"How the Clean Air Act Affects Auto Repair"

2:00 p.m.
June 28, 2005

311 Cannon House Office Building

Good afternoon. My name is Fred Bordoff. I'm Vice President of the Service Station Dealers of America and Allied Trades, known as SSDA-AT. SSDA-AT represents over 15,000 independently owned service stations and repair facilities in over fifty states, either through direct membership or through affiliation with affiliated state associations.

On behalf of our members, I want to thank the chairman and members of the subcommittee for the opportunity to present our views on the challenges and difficulties encountered by the independent auto repair technicians as a result of the refusal of the auto manufacturers to share with us the same technical information furnished to their own dealers. The direct result is that the independent technician is not able to perform repairs on these automobiles. In instances when manufacturers do grant access to information and programs, it is done at costs which are often prohibitively high to the small independent auto repair shops, thus effectively causing them to be unable to render these services, and forcing their customers to seek to have the repairs done at auto dealerships.

The complex, computerized systems of the modern automobile render it essential to have the proper information and training.

I am the president of the New York Center for Automotive Technology, an independent general repair shop located in Queens, New York. Because my facility is engaged to perform repairs for a major dealership in New York, which sells great numbers of used cars and which owns several new car franchises, I am granted some access to information which allows us to perform repairs, but in general the average independent technician often cannot tend to a customer's repair needs. I will offer a few examples to illustrate the problem.

A Volvo owner complains that the driver's side window does not go down. After testing, the diagnosis is a bad window switch. A new switch is purchased from Volvo and installed. The new switch does not work. Further investigation reveals that the switch has to be programmed by a Volvo dealer to work. The car then has to go to Volvo to complete the repair. This is likely to cause delay and frustration to the customer, who will resort to Volvo's services in the future instead of the independent facility.

Another example is that of a motorist driving a BMW, who experiences poor performance on the road, and then sees the Service Engine light go on. He or she pulls into a convenient diagnostic facility. It is determined that the throttle body is at fault. A new throttle body is purchased from the local BMW dealership and installed. The car won't even start now without being programmed at the BMW dealership. Imagine the reaction of that customer, who drove in a car, and has to see it towed out!

On many of today's cars, if the battery goes dead, the radio loses its memory. After a new battery is installed, it is discovered that the radio now does not operate. The radio now has to be coded by a dealership service facility since they are the ones with access to the code. In order to obtain the radio code, it takes between 1 and 4 minutes, depending on the speed of your internet access. Most dealership service facilities charge 1 hour labor for this service. Is it any wonder why they want to keep this information to themselves?

Manufacturers have two information systems, and for a fee, they will allow independent repair shops to access the Technician Information System. The other system is the Dealer Information System. I can tell you that they are not the same at all. The dealer Information System is more complete and easier to use. The dealership service facilities also have access to tech support, which the independent repair facilities do not. Again, it leaves the independent at a disadvantage.

While companies like Alldata and Mitchell supply information to the independent shop at a reasonable cost, it is the same as the Technician Information System that the manufacturer also supplies to the independent. Another difficulty with Alldata and Mitchell is the lag between getting the information, publishing it, and distributing it to the shops. This can be a 3 to 6 month lag by the time the shop gets the information.

While access to information is a problem, the greater issue is that of the programming ability, or lack thereof, available to the independents. Without it, the entire repair at the independent facility is viewed as useless by the customer.

Last year, our facility spent in excess of $65,000 on manufacturer's specific scanners and we still have difficulty with some cars. These costs are not something that small independent repair shops can incur as a cost of doing business, and keep costs down to the motorist.

While some manufacturers are willing to make some information and abilities available, others are incomplete, and some have almost nothing available. This legislation is necessary to level the playing field, not only between dealership repair shops and independent shops, but also between manufacturer to manufacturer, so that repair facilities can service all makes and models and not have to leave some customers stranded.

Again, I would like to thank you for giving me your time and allowing me to testify on behalf of the industry.

TESTIMONY OF

AARON M. LOWE

VICE PRESIDENT, GOVERNMENT AFFAIRS

FOR THE

AUTOMOTIVE AFTERMARKET INDUSTRY ASSOCIATION

REGARDING THE

MOTOR VEHICLE OWNERS RIGHT TO REPAIR ACT

BEFORE THE HOUSE WORKFORCE, EMPOWERMENT

AND GOVERNMENTAL PROGRAMS SUBCOMMITTEE

June 28, 2005

Good afternoon. My name is Aaron Lowe and I am vice president of government affairs for the Automotive Aftermarket Industry Association.

The Automotive Aftermarket Industry Association (AAIA) is a Bethesda, Md.-based association with more than 7,566 member companies and affiliates that manufacture distribute and sell motor vehicle parts, accessories, tools, equipment, materials, supplies and services. AAIA represents more than 54,000 parts stores and repair shops nationwide. The organization is comprised of manufacturers, distributors, jobbers, wholesalers, retailers, manufacturer's representatives and other companies doing business in the automotive aftermarket.

We are pleased to be here to discuss the Motor Vehicle Owners Right to Repair Act (HR 2048) that was introduced by Representatives Joe Barton (R-TX), Edolphus Towns (D-NY) and Darrel Issa (R-CA). HR 2048 requires car companies to make available to the independent service industry the same service information and tools that are available to their new car dealers. Passage of this legislation is critical not only to the thousands of small businesses that comprise the automotive repair industry, but also their customers who depend on local repair shops to keep their vehicle operating safely, cleanly and dependably.

We are fortunate in this country to have access to the most competitive aftermarket in the world. In most countries, the car companies and their dealers dominate the repair market, thus the cost to maintain a vehicle is extremely high. However, in the U.S. the

reverse is true. New car dealers compete head to head with independent repair shops for the business, keeping repair affordable for most Americans. The goal of right to repair legislation is not to unfairly advantage independents over dealers, but to preserve competition and thus ensure that car owners continue to have a choice in where they bring their second largest investment for maintenance and repair.

The right to repair legislation had its origin in the 1990 Clean Air Act Amendments. In this landmark legislation, Congress enacted requirements that vehicles be equipped with on-board computers that would monitor the vehicle's emissions performance and alert the driver if the vehicle was exceeding emissions standards. The on-board diagnostic system also would provide critical data to the technicians in order to ascertain the problem and help quickly and effectively determine the proper repair.

During the 1990 clean air debate, my organization along with other aftermarket groups, expressed concern that, while the on-board diagnostic system could be of great assistance to the repair industry, it also would provide the opportunity for car companies to keep access to the computer and the information necessary to use the computer as proprietary, thus locking out our industry and providing a significant advantage to the manufacture and its dealer network. Congress shared this concern and included provisions in the Act requiring that access to the OBD system be uniform and that car companies share all repair information with the aftermarket that they provide the new car dealer.

Subsequent to passage, the U.S. Environmental Protection Agency (EPA) issued rules that required the car companies to make all emissions service information and diagnostic tools available to the aftermarket at a fair and reasonable cost. Despite the hard work performed by the Agency to develop the service information availability rules, car company compliance was unacceptable. In too many cases, service information and tools needed by independent continued to be difficult to locate, too expensive or not available at all.

The problems occurring on the federal level led to the introduction and subsequent enactment of SB 1146. The aftermarket chose to pursue legislation in California due to the lead the state had taken on development of the on-board diagnostic requirements. Unlike federal clean air legislation, the California legislation mandated that the car companies maintain web sites affordably accessible to the aftermarket that contained all of their emissions related service information.

The bill further required that the diagnostic capabilities that are available to dealers over proprietary tools be made available to companies that supply tools to the aftermarket. Since most aftermarket shops work on more than one line of vehicles, and in order to ensure affordability, tools purchased by aftermarket shops must have the capability to work on multiple makes and models. SB 1146 required that the car companies make the same diagnostic capabilities available to independents as those available on their expensive proprietary tools that are available to the dealer.

Not long after passage of SB 1146 by the California Legislature, EPA also revised its service information rules to mirror the California requirements.

Since passage of the Clean Air Act and SB 1146, the use of computers has grown significantly beyond just emissions related system. From brakes, air bags, entertainment systems to your anti-theft system, computer chips control virtually every aspect of a vehicle. While these changes have enhanced vehicle safety, and improved our "creature comforts", these changes have also increased the challenges to the repair industry. No longer is it sufficient to just have access to tools and information needed for emission related systems, today's shop needs access to computers and information impacting all aspects of the vehicle.

The Motor Vehicle Owners Right to Repair Act was first introduced in August of 2001 to address this new reality. The concept behind the bill was that once a car owner purchases a vehicle, he or she should have the ability to obtain maintenance and repair for that vehicle where they want and not at the discretion of the vehicle manufacturer. As I said previously, the legislation does not seek to change the market reality, but rather ensure that the current state of technology does not change a market dynamic that has benefited U.S. consumers and the small businesses that serve them.

A little over one year following the introduction of the legislation, and as support for the bill continued to grow both in the House and Senate, the car companies issued a letter promising to "make available by August 31, 2003, emission and non-emission-related

service information, training and diagnostic tools in the same manner and to the same extent as specified by California Air Resources Board regulations for emissions-related systems and components."

This letter was a major step forward for the aftermarket in that it was the first time, short of regulation, the manufacturers had ever promised to make any information available to our industry. It indicates that the state and federal service information legislation, combined with the threat of passage of the Motor Vehicle Owners Right to Repair Act, had moved the car companies in the right direction. However, the promises of the car companies, while progress, do not go far enough to either resolve our current issues, or to ensure the future of a competitive repair market.

Our central issue with the letter is that it is not enforceable. Should any of the car companies determine to walk away from it, there would be nothing that our industry or the other car companies could do to hold them to the promises made in the letter. Even today, the car company's performance in meeting their own promises is not without serious problems. At hearings held by the Commerce, Trade and Consumer Protection Subcommittee of House Energy and Commerce Committee last September, testimony from repair shops provided ample evidence that not all information is actually available, despite the fact that the car companies continue to maintain that it is there. Further, a survey of repair shops performed by the Tarrance Group found that 59% of respondents had problems getting access to repair information or needed tools necessary for repairs and 67% reported that they have been forced to send vehicles back to the dealer.

The hearing also focused on the National Automotive Service Task Force (NASF) that was intended to serve as the enforcement entity for the car company's letter of promise. According to testimony of Bill Haas, a representative of the Automotive Service Association that co-leads NASTF, the average time necessary to resolve complaints is twelve days. Testimony during the hearing indicated that in some cases it took months to obtain a response. In many cases that response was not sufficient to ensure repair of the vehicle in question. The problem is that most shops do not have days, weeks or months to obtain information necessary to complete a repair. When a vehicle is in the bay, the car owner wants that vehicle fixed the same, or at worst, the next day. It is simply not acceptable to our industry for a technician to have to wait weeks or even months to obtain information that they need to repair vehicles sitting in their service bays today.

It is clear that NASTF is not enforcement group, but simply a pass-through in order to funnel an information request from the technician to the responsible car company. Once there, it is up to the car company to decide how to respond. NASTF as an entity neither forces nor negotiates a resolution on behalf of the independent technician. In an April 22, 2005 letter sent to Kirkland and Ellis, that represents the vehicle manufacturers, the Federal Trade Commission (FTC) stated that for third-party review systems to be effective, they must "be impartial and objective; be public; and apply standards consistently." NASTF does not meet this test since it is controlled by the vehicle manufacturers and therefore cannot be either impartial or objective.

The bottom line is that while promises help move the ball forward, our industry cannot rest its future on them without some hammer to ensure everyone stays at the table. Car companies have a long track record of withholding needed information and tools; and they make too much money on the aftermarket to accept anything less.

According to the National Automobile Dealers Association (NADA), even though dealership parts and service department sales comprise just 11.8 percent of typical dealer's total sales, it contributes 48 percent of the total operating profit. New car sales make up 60 percent of total sales, but only contribute 35 percent of total profit. Our fear, and history has shown this to be true, is that the marketing and competitive interests of the manufacturers will override their current promise to make information and tools available should the threat of legislation disappear from their radar screen.

While the overall goal of the right to repair bill is the same, the legislation has been significantly rewritten for this Congress to ensure that it is workable for the Federal Trade Commission which will need to draft regulations and enforce its requirements; and that it is fair to the vehicle manufacturers.

Of particular importance, the newly drafted legislation provides significant protections to car company's trade secrets. During last year's discussion, car companies charged that right to repair was a "parts bill" and that the aftermarket was after the trade secrets or blue prints of automotive components to provide its manufacturers with a competitive

advantage in building replacement parts. Let me assure you that this is not the case. Aftermarket companies have been designing components that are as good as, or better, than the car company branded parts for years, and we do not need their blueprints to continue this tradition. Therefore, while the bill considered in the last Congress made it clear that car company trade secrets were protected, we have gone even further this year to clarify that we are not after their trade secrets. The bill introduced this year states:

"Nothing in this Act shall be deemed to require the disclosure of trade secrets, nor the public disclosure of any information related exclusively to the design and manufacture of motor vehicle parts. No information necessary to repair a vehicle shall be withheld by a manufacturer if such information is provided (directly or indirectly) to franchised dealerships or other repair facilities."

We don't know how it could be much clearer. It is also important to remember that EPA and CARB, despite years of experience enforcing the emissions related service information rules, we are not aware of a single legal challenge from the car companies based on protection of trade secrets or patents. We don't expect there would be any when the FTC enforces the right to repair act, since the requirements are similar.

The redrafted bill also ensures that we will not need to create an entirely new regulatory scheme or infrastructure. Instead, the legislation would simply build on the work that has already been accomplished on emission related information. Through use of the

current service information web sites, the infrastructure and experience are already there. We just need to extend those requirements to include non-emissions related information.

Finally, this bill is not a free ride for the aftermarket. Car companies are not required to give this information away. Independent shops will still need to make the investment in tools and information and, yes, training in order to stay competitive. This bill simply ensures that the information and tools are available to these small businesses in a convenient, effective and efficient manner.

The new bill further ensures that, if manufacturers follow through on their promise, they will have nothing to fear. Only those car companies that seek to use their computer systems for competitive advantage will be the subject of FTC enforcement. Hopefully, with this hammer in place, we will never have to use it.

I want to add that the aftermarket is open to discuss any of the provisions in the new bill with the car companies and to work with them in order to ensure a workable and fair law. In fact, we have sent a letter dated April 22, 2005(attached for the record) to the car companies offering to meet with them on the legislation. We have yet to receive a response.

Chairwoman Musgrave, most surveys indicate that, once the warranty has expired, 70 to 75 percent of car owners prefer the independent aftermarket based on price,

convenience and trust. This legislation will ensure that the small businesses that have worked hard to serve their customers and keep America on the road will be able to stay in business. It also will ensure that their customers will continue to enjoy the most competitive and effective aftermarket in the world.

We urge Congress to pass right to repair legislation this year.

Thank you for your attention, and I am available to answer any questions you might have.

STATEMENT OF

JOHN CABANISS
ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS

BEFORE THE

SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT,
AND GOVERNMENT PROGAMS
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

JUNE 28, 2005

Thank you for the opportunity to testify before the Subcommittee regarding vehicle service technology issues. My name is John Cabaniss. I am the Director for Environment and Energy at the Association of International Automobile Manufacturers,[1] on behalf of which I am testifying today. I have been in my current job with AIAM for ten years. Prior to that, I worked in the U.S. Environmental Protection Agency's motor vehicle emissions program for fifteen years and for the State of Virginia's air pollution control program for about ten years. I grew up with an automotive trades background. Both my father and my grandfather were shop owners and technicians for many years.

For the past five years, I have had the privilege of serving as the chairman of the National Automotive Service Task Force, a cooperative activity involving automakers, the automotive service industry, and the equipment and tool industry.[2]

I will address today some of the issues raised by the proponents of the so-called "right to repair" legislation, and I hope you will agree that the Task Force is the proper venue for addressing service issues, and that further legislation or regulation in this area is unnecessary and, in fact, would prove counter-productive.

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[1] The Association of International Automobile Manufacturers (AIAM) is a trade association representing 14 international motor vehicle manufacturers who account for 40 percent of all passenger cars and 20 percent of all light trucks sold annually in the United States. AIAM members have invested over $26 billion in U.S.-based production facilities, have a combined domestic production capacity of 2.8 million vehicles, directly employ 75,000 Americans, and generate an additional 500,000 U.S. jobs in dealerships and supplier industries nationwide. AIAM members include Aston Martin, Ferrari, Honda, Hyundai, Isuzu, Kia, Maserati, Mitsubishi, Nissan, Peugeot, Renault, Subaru, Suzuki and Toyota. AIAM also represents original equipment suppliers and other automotive-related trade associations. For more information, visit our website at www.aiam.org.

[2] NASTF itself takes no positions on issues.

To begin, a little background information is in order.

- The U.S. auto industry is highly competitive with over 20 large and intermediate automakers vying for the sales of about 17 million new cars and light trucks each year.
- Over 220 million vehicles are registered in the U.S.
- There are several hundred models sold in any given year, and each automaker publishes tens of thousands of pages of service and training information each year.
- Automakers compete aggressively for J.D. Power quality ratings, service ratings, and in all other aspects of the business.
- Automakers cannot risk consumer dissatisfaction in any aspect of the vehicle ownership experience, including vehicle service.
- About 70-80% of all non-warranty vehicle service is performed in independent shops with hundreds of millions of auto repair events being successfully performed each year.
- Recognizing this, automakers must respect the independent aftermarket service industry as their true partners in ensuring consumer satisfaction and protecting brand loyalty. To do otherwise would be contrary to their own interests.
- The National Automotive Service Task Force[3] is a completely voluntary effort, established in 2000 with the specific mission to facilitate the prompt identification and correction of gaps in service information, training, and diagnostic tools. NASTF collects no dues and has no support organization.
- Given the volume of information, the NASTF recognizes that some gaps are inevitable, especially with the rapid pace of change in auto technology and information technology.
- It was also recognized that a continuing forum for open communications and cooperation is the best way to address issues.
- NASTF has five standing committees for Service Information, Tools and Equipment, Training, Vehicle Security, and Communications.
- NASTF meets twice each year and the committees meet year-round.
- NASTF has a complaint process to address any issues or deficiencies.

With that background, let's review some of the proponents' claims.

Claim #1: The complicated nature of modern vehicle technology is limiting consumers' choice of where to get their vehicles repaired and serviced.

Reality: Consumers continue to have the choice of where to get their vehicles serviced and repaired with independent shops accounting for 70-80% of non-

[3] More information on NASTF is available at www.nastf.org.

warranty service. As the Automotive Service Association and others can attest, independent shops continue to provide quality services at competitive prices. Internet and E-commerce technologies are being used today to provide these shops with the latest technical information, faster and cheaper than ever before. Of course, business owners must exercise judgment to make the best business decisions for their situations, but now as in the past successful businesses put customers first. Advances in automotive technology have and will continue to challenge all technicians and shop owners to make improvements and investments in their businesses to keep pace with technology.

Claim #2: Automakers' service websites do not include complete information.

Reality: Automakers are doing all that they reasonably can to make the same service information, training materials, and factory tools available to independent shops as to dealers. All automakers have established service websites which contain service and training information, available 24 hours per day/7 days per week. Is every manufacturer's information perfect? Of course not. There are literally millions of data-points that need to be accessible and from time-to-time something will fall through the cracks. Like any complex data network, improvements are continually being made to benefit dealers and independent shops alike. And certainly automakers are always open to constructive feedback.

Claim #3: Automakers' service websites are too expensive.

Reality: Nearly all automaker service websites are accessible for a period of 24 to 72 hours for $10 to $20. Frequent users have the option for monthly or longer subscriptions, but obviously each user has to consider the business case of the cost of such options versus their frequency of needing information. This small short-term access cost is a minor fraction of most auto repair bills and is well worth the small cost to obtain any needed service information. Most independent shops rely on "one stop shopping" for most of their service information needs by using independent information providers, such as ALLDATA or Mitchell 1, which provide information on most repairs for most makes and models. These shops tend to use automakers' websites only as a last resort for information they cannot find though their normal sources.

Claim #4: The voluntary approach of ensuring information availability provides no enforcement to ensure continued good faith on the part of automakers.

Reality: The continued good faith of automakers is ensured because the marketplace requires it – automakers make sure their customers can get their vehicles repaired at the shop of their choice. Automakers face stiff competition

from all the other automakers. They have a vested self-interest in ensuring that motorists have a positive ownership experience, which includes the ability to have a vehicle easily repaired when needed. Automakers and independent aftermarket shops are partners in ensuring customer satisfaction. Consumer surveys, such as the J.D. Power surveys, are increasingly evaluating customer concerns about service-ability. Automakers cannot afford any "bad press" that would result in not providing full support to customers, dealers, and independent shops for service technology.

Claim #5: Using the National Automotive Service Task Force complaint process takes too long. Shops cannot wait for days to get information.

Reality: In virtually all cases, shops are getting the information they need when they need it on a 24/7 basis from automakers' websites or through independent information providers. In fact, automakers' websites and independent information providers have "help" contacts if information cannot be quickly located. In 2004, NASTF received only 48 complaints involving 15 auto manufacturers. This is obviously a very small number compared to the number of vehicle repairs conducted annually. Moreover, most NASTF complaints are handled quickly. A few complaints involve a broader context which may require updating documents or making tool changes. It takes longer to address such complaints, but once addressed, they prevent future problems of a similar nature. Automakers are striving for continuous improvement of their service websites just as they are with their vehicles.

Claim #6: Legislation and regulation are needed to ensure automakers continue to provide information and address the types of problems identified by proponents of legislation.

Reality: The types of problems identified by proponents of H.R. 2048, such as, the cost of accessing automakers' websites, differences in automakers' websites, occasional content errors in information, and lack of enforcement are not issues which will be effectively addressed in regulations by FTC or any other agency. Given that the current cost structure and websites are based on EPA's emissions regulations and approved by EPA, there is no reason to believe that the FTC would conclude that any significant changes are needed. As noted above, occasional content errors need to be and will be addressed through a process of continuous improvement, with or without regulation. And federal regulatory and enforcement processes are laden with procedural steps which do not lend themselves to addressing problems quickly. As noted by FTC in a recent letter to Representative John Dingell, self-regulatory programs are often the best ways to address matters in a expeditious manner. This is especially true in such a dynamic area as information technology. The only thing that further federal regulation under H.R. 2048 would clearly do is slow down the process and delay

further progress while the parties educate the FTC on the issues and debate the merits of regulatory approaches. ***This outcome benefits no one – not the service industry, not the automakers, not consumers.***

In conclusion, automakers are completely committed to the National Automotive Service Task Force and to continuing to work cooperatively with the service industry on service technology issues. We welcome the support and participation of all parties in the service industry to improve and expand this voluntary process to make it even more effective. Bringing everyone's efforts and resources to bear on producing results, not rhetoric, can only improve our ability to provide the information, training, and tools needed by the service industry. If any of the members of the Subcommittee are contacted by a constituent with any type of service information question or problem, please contact me so we can address the issue.

For the record, automakers oppose H.R. 2048 because we believe such legislation is unnecessary and counter-productive. We acknowledge that there have been some modifications in this year's bill, H.R. 2048; however, we continue to have concerns about the protection of intellectual property and the potential for excessive litigation[4].

Again, thank you for the opportunity to address the Subcommittee on this important issue.

[4] More information on the automakers' position on H.R. 2048 is available at www.carfixinfo.org.

Washington Office
607 14th Street, N.W. Suite 200
Washington, D.C. 20005
202/942-2050
FAX 202/783-4788

TESTIMONY OF AAA

HOUSE SMALL BUSINESS SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS

HEARING ON HR 2048–THE MOTOR VEHICLE OWNERS' RIGHT TO REPAIR ACT

KATHLEEN MARVASO
MANAGING DIRECTOR, AAA GOVERNMENT RELATIONS
& TRAFFIC SAFETY ADVOCACY

JUNE 28, 2005

Good afternoon, Madam Chairwoman and members of the subcommittee. I am pleased to be here today on behalf of AAA to provide testimony in support of HR 2048, the Motor Vehicle Owners' Right to Repair Act.

My name is Kathleen Marvaso. I am the managing director of AAA's Washington Office, where we advocate a wide range of consumer and safety issues which affect the traveling public's safety and mobility. AAA has represented the interests of car owners for over 100 years, and currently serves more than 48 million members – a quarter of all U.S. households.

AAA has a strong interest in the Right to Repair legislation because we believe it is necessary to ensure our members' safety, and their access to high quality, convenient, and competitively priced auto repair.

In supporting this bill, AAA's goal has been to ensure that manufacturers make service and training information, as well as the appropriate diagnostic tools, available to any repair facility, not just those in a franchised dealer network. Ideally, this should occur voluntarily.

Yet our members and many independent repair facilities in AAA's approved auto repair network continue to tell us that there are many instances where technicians do not have the information or tools they need to fix today's vehicles. Thus, consumers are denied choice among qualified repair options; often, they are inconvenienced, and regrettably some AAA members are left with no choice but to drive their vehicle long distances for repairs. Too often today's consumers are essentially denied something they buy when they drive their new car off the lot – access to the data necessary to get their vehicle repaired.

AAA therefore strongly supports the Right to Repair bill for three important reasons: consumer choice, vehicle safety, and the right of car owners to access the data generated by their vehicle.

Despite some positive steps toward making more information available to independent repair facilities, much of what is provided is incomplete, difficult to find, or prohibitively expensive. As a result, instead of fixing the problem themselves, some repair technicians are forced to put customers back out on the road searching for a dealer shop that may not have an available appointment, may not be nearby, or may not even be open.

Many of our members prefer to use dealer facilities. But, many choose to use the services of independents. AAA believes our members deserve and need choice to ensure good quality service and a fair price in auto repair. This can only occur if all facilities have access to the same information and tools.

Technology has made the vehicles we drive smarter. More than 80% of the systems on some cars are monitored or controlled by a computer. Computers in the car can tell us about the need for an oil change, trouble with an oxygen sensor, problems with brakes, and even if our tire pressure is too low – before there is a problem or critical safety breakdown. It makes sense that the information necessary to diagnose and repair any of these problems should be available to all repair technicians, both within and outside of dealers' networks.

These days, it is hard to mention this issue without someone telling you of their own experience with a repair problem. Here is a scenario representative of what we hear: Imagine traveling on a Saturday afternoon. The dashboard light comes on warning of a malfunction with the antilock brake systems. You stop at the first service station and ask for help. The technician checks the vehicle and determines the problem is not mechanical, but rather, is in an electrical system only the dealer has access to. The closest dealer for your make of car is 25 miles away and won't open until Monday morning. Is it safe to keep driving the car on the trip? If not, is it safe to drive the car to the dealer and wait until Monday, or do you need a tow truck to pick up the car? Can the dealer service the car Monday, or are they booked until later in the week?

This situation could just as easily have involved the supplemental restraint system, or the electronic traction and stability control system. Each has the potential to compromise the safety of the vehicle's owner and passengers and other motorists as well. At the same time, the inability of independent technicians to repair "comfort features" like climate control may not create dangerous situations, but they can certainly cause inconvenience for motorists.

AAA believes that when you drive off the lot with your car, you own more than just the vehicle; you own the information necessary to have it repaired by a trusted service advisor of your choice, whether it be an independent technician or dealership. To the extent that the manufacturers contend that certain information is not available because it should be considered intellectual property, we need to look no further than the clear language of HR 2048, which states that manufacturers do not have to disclose any proprietary design information. At the same time, whether it is viewed as intellectual property or real property – this repair information is really the property of the car-buyer.

Simply put, this legislation is about putting common sense into the repair process, ensuring that consumers get a choice in repair service, whether they choose a dealership or an independent.

Thank you for the opportunity to share AAA's views on this important consumer issue. I will be happy to answer any questions at this time.

TIRE INDUSTRY ASSOCIATION

www.tireindustry.org

Statement of the

Tire Industry Association

Submitted to the

House Subcommittee on

Subcommittee on Workforce, Empowerment and Government

"The Clean Air Act Affects Auto Repair"

June 28, 2005

311 Cannon House Office Building

2 p.m.

Maryland Office:
1532 Pointer Ridge Road 800.876.8372
Suite F 301.430.7280
Bowie, Maryland 301.430.7283 f
20716

Madam Chair, Members of the Subcommittee, on behalf of the 5,000+ members of the Tire Industry Association (TIA), thank you for the opportunity to submit testimony for the record. This hearing on "The Clean Air Act Affects Auto Repair" is very important to the automotive industry and specifically the tire industry.

TIA is an international association representing all segments of the tire industry, including those that manufacture, repair, recycle, sell, service or use new or retreaded tires, and also those suppliers or individuals who furnish equipment, material or services to the industry. The Tire Industry Association (TIA) has a history that spans more than 80 years and includes several name changes. Originally known as the National Tire Dealers & Retreaders Association (NTDRA), the organization gave birth over the years to the American Retreaders Association (ARA) and the Tire Association of North America (TANA). ARA changed its name to the International Tire & Rubber Association (ITRA) and merged with TANA in 2002 to form the current Tire Industry Association (TIA), which now represents every interest in the tire industry.

The majority of TIA members are independent tire retailers who also perform automotive service. Our members have found it increasingly difficult over the years to service new vehicles due to the limited "sharing of information" from the automobile manufacturers. As new technology develops, this information is not readily disseminated outside the network of automobile dealers. This is why TIA fully supports the Vehicle Owner's Right to Repair Act (H.R. 2048). The House version of the bill has been reintroduced by Representative Joe Barton (R-TX) and we urge every Member of Congress to support this crucial legislation.

The Vehicle Owners' Right to Repair Act would mandate that the auto manufacturers – including all original equipment manufacturers (OEMs) – provide affordable access of all vehicle service information and tools to independent repair facilities. Anything available to the

auto manufacturers' franchised dealers would be available to the independent repair facilities. At this time, the bill could not be more important to our members.

On April 8, 2005, the National Highway Traffic Safety Administration (NHTSA) issued its final Tire Pressure Monitoring System (TPMS) rule. The Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act passed as a result of the Ford/Firestone crisis in 2000 included a mandate that all new passenger vehicles be equipped with a TPMS. According to this regulation, all passenger and light truck vehicles must be equipped with a TPMS system by September 1, 2007. One of TIA's largest concerns with the latest TPMS ruling is that the government is ignoring the need of independent tire dealers and automotive service providers to be given the OEM information necessary to install, service, maintain, recalibrate and fix these TPMS systems. Our members will be dealing with these monitoring systems, yet there are a variety of different companies that manufacture them, and all are slightly different. TIA members will need information from the OEMs to figure out each TPMS system and that information is not always easily accessible or available. The time for passage of the Right to Repair Act has never been more important to the tire industry or more critical to our members.

We are aware of the automobile manufacturers' agreement with the Automotive Service Association (ASA), promising that repair information and tools would be forthcoming – implying that there is no need for this bill. TIA, while viewing that agreement as a step in the right direction, sees no enforcement mechanism in the agreement and therefore still fully supports the Motor Vehicle Owners' Right to Repair Act. TIA remains concerned that without the legislation, the auto manufacturers could back out of this agreement at any time, forcing the industry to start the battle all over again from the beginning. TIA is also aware that many of the

auto manufacturers are putting service information on the Internet but we hear from our independent dealer members that the information is not complete and still very costly. Furthermore, some auto manufacturers never signed the ASA agreement and therefore feel no obligation to provide any information to any independent dealers.

The automobile manufacturers that signed the letter of agreement with ASA oppose passage of the Right to Repair Act. THIS MAKES NO SENSE! If these manufacturers plan to keep their end of the agreement and make information accessible and affordable to independent service providers, this legislation only backs up their commitment to the automotive service industry. The fact that these manufacturers oppose this legislation causes TIA to question their commitment to the agreement and forces us to keep supporting the legislation.

Consumers deserve the right to take their vehicle to their mechanic of choice. They should not be forced to return to auto dealerships for service because independent providers do not have access to the tools and information they need to repair a vehicle. This is another critical aspect of this legislation.

Last Congress the Right to Repair Act had over 100 bipartisan cosponsors. There were concerns voiced by the Federal Trade Commission about the bill and the FTC's role in enforcement. These concerns have been addressed in H.R. 2048. The Act never intended to force the auto manufacturers to give away proprietary information or "trade secrets". This point has been clarified in the "new & improved" bill. Also, this year's bill clarifies the FTC's involvement with enforcing the mandate on auto manufacturers.

TIA urges every member of this Committee to support the Right to Repair Act by cosponsoring the bill. TIA is committed to seeing this legislation pushed through Congress for the betterment of businesses performing automotive repair.

If you have any questions about our testimony, please contact Becky MacDicken, TIA's Director of Government Affairs, at 800-876-8372 x 112 or bmacdicken@tireindustry.org.

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