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February 27, 2026

**Answers to the Democratic Questions for the Record of the Senate Committee on Commerce, Science, and Transportation's Hearing on the Future of Self-Driving Cars**

Dear Senator Klobuchar, Senator Duckworth, and Senator Blunt Rochester,

Thank you for your thoughtful questions about automated driving. I would like to introduce my answers with three overarching points.

**First**, the age of the automobile involved an enormous social experiment: What happens when hundreds of millions of ordinary humans propel themselves in two-ton machines at speeds that would have been unthinkable only a century prior? We must still deal with the results, we must learn from our mistakes, and we must do better. And so, as the age of AI ushers in a new set of enormous social experiments, we must not pretend that the status quo is acceptable. Far from it: Today alone, one hundred people will die on US roads. Many other countries—*Canada! Australia! Much of Europe!*—have chosen to save lives that every day we choose to sacrifice.

**Second**, it is important to conceive of safety in a broad sense.<sup>1</sup> Traffic safety is freedom from death, whether caused by a crash or by transportation pollution. It is freedom from physical injuries and from the devastating emotional injuries attendant to losing a loved one. It is freedom to travel without experiencing violence or harassment, including at the hands of government. It is freedom to easily move by foot or the equivalent, to cultivate community, and to access the people, products, services, and activities necessary for a full and meaningful life. And it is freedom of future generations to enjoy the same. When we consider automated driving, we must not ignore that our country's transportation policy choices play a large role in melting our ice caps, acidifying our oceans, and destroying our homes. To be clear: The Earth will be fine; the people we love may not.

**Third**, while much of the focus of automated driving is about the roles of humans and machines, we should also pay attention to orthogonal questions about the concentration and distribution of power. If done right, automated driving could empower individuals, including those with disabilities, who are poorly served by our current system of

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<sup>1</sup> *Road Traffic Safety*, LAW OF THE NEWLY POSSIBLE (updated Sept. 26, 2022), [https://newlypossible.org/wiki/Road\\_traffic\\_safety](https://newlypossible.org/wiki/Road_traffic_safety) .

transportation and land use. But it could also make us more vulnerable to the actions of malicious individuals who use cars and computers as their weapons of choice. And if done right, automated driving could protect people by ensuring consistent compliance with rules of the road. But it could also give vast power over our everyday lives to a handful of companies—or to the governments whose favor those companies are courting.<sup>2</sup>

In my view, automated vehicles are operated by the companies that develop and deploy them.<sup>3</sup> These companies act through some combination of their machine agents (including the hardware and software that engineers call an “automated driving system”) and their human agents (including the remote human assistants who communicate with vehicles, passengers, and first responders). In the answers that follow, I therefore treat these companies as the “drivers” of their automated vehicles.

### **Senator Klobuchar, you asked about vehicle data, first responders, and preemption.**

**1. Vehicle Data.** *Autonomous vehicles are constantly producing and logging data. These data logs are the main eyewitness when an autonomous vehicle is involved in a collision. It's important that law enforcement and victims can access this data and independently review it when an accident occurs. Why is ensuring victims' access to vehicle data—and the prevention of data manipulation—important for the safe deployment of autonomous vehicle technology?*

Because directly establishing the safety of any given automated driving system requires literally millions of miles of real-world experience, regulators need a realistic way to reasonably predict this performance. I believe that our best proxy for the safety of a particular technology is the trustworthiness of the companies behind it.

“A trustworthy company shares its safety philosophy by explaining what it is doing, why it believes that to be reasonably safe, and why the public can believe it.”<sup>4</sup> Making its case to the public—truthfully and compellingly—requires credible data. To be credible, these data must be available and verifiable. Moreover, they must capture not only successes but also failures. After all, “The first step in solving a problem is recognizing there is one.”<sup>5</sup>

There is a simple word for intentionally concealing, manipulating, and misrepresenting information: Lying. Lying about safety-relevant data is a fundamental betrayal of individual

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<sup>2</sup> For more on enforcement, see Bryant Walker Smith et al., *Ideal Enforcement: How Do We Achieve Optimal Enforcement of Traffic Law as Ubiquitous Enforcement Becomes Technologically Conceivable?*, (Feb. 4, 2022), <https://papers.ssrn.com/abstract=5034907>. For more on ensuring fair competition among robotaxi providers specifically, see Bryant Walker Smith & Matthew Wansley, *Regulating Robotaxis*, 99 S. CAL. L. REV. (forthcoming 2026), <https://ssrn.com/abstract=5595951>.

<sup>3</sup> Bryant Walker Smith, *The Trustworthy Company*, 115 GEO. L.J. (forthcoming 2026).

<sup>4</sup> *Id.*

<sup>5</sup> THE NEWSROOM, *We Just Decided To*, Season 1, Episode 1 (HBO MAX).

victims, of an industry collectively building its reputation, of the public at large, and of the very trust upon which a society depends. Dishonest companies do not belong on our roads.

While it may be prudent to "never attribute to malice that which is adequately explained by stupidity,"<sup>6</sup> the public is unlikely to be so generous. And unfortunately, some companies in this field have been, at best, sloppy with their safety-critical data. Consider two examples:

- Cruise was an automated driving company that operated robotaxis until a 2023 incident seriously injured a pedestrian. In response, the company quickly shared a video with regulators and some journalists to show that a hit-and-run human driver had first struck the pedestrian. But the company did not show, and did not mention, that its own robotaxi had subsequently dragged the victim about 20 feet. Cruise settled with her, but the terms were kept from the public. It also paid a criminal fine.<sup>7</sup>
- Tesla is an automaker that has deployed a driver assistance system that it hopes will eventually be capable of automated driving.<sup>8</sup> In 2019, a human driver relying on this driver assistance system drove through a stop sign and hit two people on the other side, killing one and seriously injuring the other. The victims were able to sue only because they were not Tesla customers and therefore were not contractually compelled to arbitrate. For years, Tesla insisted it did not have key data about that crash. Only after an independent computer expert recovered those data from a vehicle module did Tesla acknowledge also having this "collision snapshot" on its company servers. A jury returned a verdict that included \$200 million in punitive damages against Tesla, and the judge recently concluded that the trial evidence "more than supports" that verdict.<sup>9</sup>

The US Department of Transportation's Transforming Transportation Advisory Committee (TTAC) made specific recommendations on the topic of automated driving and data.<sup>10</sup> I

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<sup>6</sup> *Hanlon's Razor*, WIKIPEDIA (last updated Feb. 13, 2026),

[https://en.wikipedia.org/wiki/Hanlon%27s\\_razor](https://en.wikipedia.org/wiki/Hanlon%27s_razor). (I cite Wikipedia when it is useful.)

<sup>7</sup> Press Release, Cruise Admits to Submitting a False Report to Influence a Federal Investigation and Agrees to Pay \$500,000, U.S. ATT'Y'S OFF. N. DIST. CAL. (Nov. 14, 2024), <https://www.justice.gov/usao-ndca/pr/cruise-admits-submitting-false-report-influence-federal-investigation-and-agrees-pay>.

<sup>8</sup> See generally, Bryant Walker Smith, "Self-Driving" Means Self-Driving, 74 DRAKE L. REV. (forthcoming 2026), <https://ssrn.com/abstract=5631391>.

<sup>9</sup> Trisha Thadani & Faiz Siddiqui, *Tesla Said It Didn't Have Key Data in a Fatal Crash. Then a Hacker Found It.*, WASH. POST (updated Aug. 29, 2025), <https://www.washingtonpost.com/technology/2025/08/29/tesla-autopilot-crashes-evidence-testimony-wrongful-death/>; Jonathan Stempel, *US Judge Upholds \$243 Million Verdict Against Tesla over Fatal Autopilot Crash*, REUTERS (Feb. 20, 2026), <https://www.reuters.com/world/us-judge-upholds-243-million-verdict-against-tesla-over-fatal-autopilot-crash-2026-02-20/>.

<sup>10</sup> TTAC TRANSFORMING TRANSP. ADVISORY COMM., FORMAL RECOMMENDATIONS OF THE TRANSFORMING TRANSPORTATION ADVISORY COMMITTEE TO THE US DEPARTMENT OF TRANSPORTATION ON ARTIFICIAL INTELLIGENCE, AUTOMATED DRIVING, PROJECT DELIVERY, AND INNOVATION FOR SAFETY 54-59 (Dec. 13, 2024).

support these recommendations, which reflect the best advice of a diverse group of experts and stakeholders.

Both data collection and data protection should advance the twin goals of human autonomy and human community. We humans have always learned and innovated by sharing information, and I hope we continue along this path. Knowledge is power.<sup>11</sup> But we must be cognizant of who wields that power, and how. Companies allow our governments to obtain information about individuals and groups that would otherwise require judicial warrants. And while automated driving companies have publicly stated that they do not automatically accede to governmental requests for information, this is a matter of corporate policy when it should instead be universal public policy.<sup>12</sup>

**2. First Responders.** *Firefighters, police, and EMTs are often unsure how to interact with autonomous vehicles during emergencies. How do you recommend companies and policymakers ensure first responders are prepared for autonomous vehicle deployment—and that AVs are trained for interactions with first responders?*

The U.S. Department of Transportation's Transforming Transportation Advisory Committee (TTAC) recommended developing and implementing a workplan for automated vehicle (AV) interactions with first responders.<sup>13</sup> Experts and stakeholders who experienced the problems you described wrote this detailed recommendation, and I fully support it.

First responders understand that every emergency is unique. To respond effectively, they integrate their systematic training with their human creativity. But automated vehicles may struggle in the edge cases in which first responders can excel. AVs may stop when they should move or move when they should stop. They may respond in ways that are counterintuitive to any human, or they may not respond at all.

Given this, AVs should be as recognizable, consistent, predictable, and controllable as possible for first responders. Emergency guides are necessary, but they are not sufficient. This is because first responders may not have time to find and consult each developer's bespoke instructions. Consider that, for *electric* vehicles, NHTSA maintains a growing database of 636 different emergency response guides.<sup>14</sup>

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<https://www.transportation.gov/sites/dot.gov/files/2025-01/TTAC%202024%20Report.pdf> ; *see also* Walker Smith & Wansley, *supra* note 2.

<sup>11</sup> *Scientia Potentia Est*, WIKIPEDIA (updated Feb. 25, 2026), [https://en.wikipedia.org/wiki/Scientia\\_potentia\\_est](https://en.wikipedia.org/wiki/Scientia_potentia_est) .

<sup>12</sup> Walker Smith et al., *supra* note 2; Walker Smith & Wansley, *supra* note 2.

<sup>13</sup> TTAC, *supra* note 10, at 54-59.

<sup>14</sup> *Emergency Response Guides*, NHTSA, <https://www.nhtsa.gov/emergency-response-guides> (last visited Feb. 25, 2026).

Similarly, remote agents need positional authority, situational awareness, relevant training, and technical means to effectively assist first responders. Even then, remote agents are not a panacea: Firefighters often wear bulky gloves that may prevent them from using cell phones, and the noise of an emergency scene may prevent them from hearing an AV's remote human agent through the AV's speakers.

Accordingly, it is also important that ~~remote assistants~~ first responders [*correction to original letter*] be able, with appropriate safeguards, to access primary or supplemental manual controls that would allow them to operate an AV directly. And yet a bill under consideration in the House would prohibit states from requiring backup physical controls of some kind.<sup>15</sup>

More broadly, AV developers need to be proactive and imaginative. After the Cruise incident that I described above, I assumed that every company would redesign its systems to be able to directly or indirectly see and hear under their vehicles. And yet Waymo recently killed a cat and then a dog under circumstances that suggest I was wrong. Next time, those beloved pets could be human children. Or they could be bombs in the undercarriage.

Another example illustrates this lack of imagination in the context of emergencies. In December 2025, Waymo's AVs contributed to gridlock in San Francisco because the company's remote agents were overwhelmed by requests for assistance at intersections with nonfunctional traffic signals. And yet, *a full year earlier*, TTAC had warned about AVs "flailing to navigate intersections effectively where traffic signals are not functioning properly and making unexpected stops in hazardous locations where a power outage or high cellular demand has slowed communications between driverless AVs and human advisors."<sup>16</sup>

Waymo, to its credit, publicly responded to the December incident with an explanation of what happened and the steps it was taking in response. It had designed for individualized signal failures, hadn't considered the effect of somewhat wider failures, and was now doing so.<sup>17</sup> But in describing a power outage that affected only *one part of one city* in which only a *couple thousand* AVs were operating, the company used phrases such as "widespread PG&E outage," "scale and sheer number of disabled traffic lights," "situation was severe enough that," and "an event of this magnitude." A regional power outage, regional cell outage, large earthquake, mass evacuation, or combination of these events would be *many*

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<sup>15</sup> The SELF DRIVE Act under consideration in the House could prevent states from requiring these AVs to have some kind of manual controls for emergencies. H.R. 7390, 119th Cong. 2d Sess. (2026), <https://www.congress.gov/bill/119th-congress/house-bill/7390> ; see also *infra*.

<sup>16</sup> TTAC, *supra* note 10.

<sup>17</sup> The Waymo Team, *Autonomously Navigating the Real World: Lessons from the PG&E Outage*, WAYPOINT (Dec. 23, 2025), <https://waymo.com/blog/2025/12/autonomously-navigating-the-real-world> ; see also Bryant Walker Smith, *On Waymo's Traffic Jams*, CIS CTR. INTERNET & SOC'Y (Dec. 21, 2025), <https://cyberlaw.stanford.edu/on-waymos-traffic-jams/> .

orders of magnitude worse. And it could happen at a time when AVs are much more common on our roads and much more essential in our daily lives.

To be credible, an automated driving developer's safety case must realistically plan for a wide range of failures, disasters, attacks, and other emergencies.<sup>18</sup>

**3. Preemption.** *Without a federal framework to meaningfully regulate AI and autonomous vehicles, states across the country have stepped up to protect people. What are the risks of federal preemption of state laws, particularly while almost no federal guardrails on autonomous vehicles are in place?*

Preempting state laws with respect to automated driving is at best premature and at worst dangerously counterproductive. We must empower, not disempower, our communities. As I noted in my written testimony:

Preempting state and local authority would be profoundly short-sighted—and I say this as someone who believes in the potential of automated driving.

Many states very much want the federal government to lead on AV policy. But great leaders lead. They actually do the work. They don't just order others to stop working. Telling US DOT what to do (and providing the resources needed to do it) would be far more helpful than telling states what not to do.

Preemption would not necessarily create certainty. Rather, it could lead to years of litigation over what the relevant statutory language means and therefore what states can still do and therefore what companies can actually do. Over the years, I have read many versions of potential preemption language. In every case, the preemptive effect and even the preemptive intent of that language have been unclear to me.

Preemption would not necessarily improve safety. Again: It is states that can order unsafe vehicles and unsafe drivers—human or otherwise—off the roads. And it is states whose juries tell manufacturers to keep up with new technologies when federal standards fall behind. Automakers don't like to be sued. But they know how to manage, and the best ones take seriously their responsibility to fairly compensate victims.

Preemption would not necessarily improve global competitiveness. Our AV industry is flourishing today because of the foundational research that the federal government supported decades ago. And while Brand America does have a serious credibility problem abroad, this has nothing to do with our commitment to federalism at home.

In fact, this federalism offers choice to US and foreign companies. Some companies have embraced California for the certainty they believe it offers, and some have

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<sup>18</sup> For more, see Walker Smith & Wansley, *supra* note 2.

embraced Texas for the flexibility they believe it offers. Waymo has done both and now has activity in multiple states and even countries.

Finally, there is a fundamental issue that discussions about preemption often seem to overlook.

We find ourselves in a time of profound change. Change often involves a loss of control, whether actual or perceived. That can be scary and destabilizing both for individuals and for societies.

The ability of communities to set their own rules—and yes, even restrictions—on AVs acts as a steam release valve on a boiler. It keeps pressure from building up, and that in turn reduces the risk of catastrophic explosion.<sup>19</sup>

In case this letter reaches readers beyond the capable senators to whom it is addressed, I should pause to introduce the incredibly complex topic of federal preemption of state law.

The US Constitution's Supremacy Clause says that when a valid federal law fights with a state law (including local law), the federal law wins. This is called preemption:

- Express preemption occurs when federal law explicitly tells states what they cannot do.
- Implied preemption is more nuanced. Comprehensive federal law in a particular field may indicate an intent to displace all state law in the same field. Federal law may conflict with state law in a way that makes complying with both impossible. Or, even if compliance is possible, following state law may nonetheless frustrate federal law.
- Congress can use a "savings clause" to specify that it does *not* intend to preempt state law in whole or in part.

Preemption can set a floor or a ceiling for state action. For example, federal law may permit states to set higher but not lower standards—or to set lower but not higher standards.

Because state law is generally what allows individuals to sue companies for injuring them, federal preemption may also limit the discretion of judges and juries in deciding whether a company's relevant conduct or product was reasonably safe.

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<sup>19</sup> Written Testimony of Professor Bryant Walker Smith for the U.S. Senate Commerce Committee's Hearing on Automated Driving (Feb. 4, 2026), <https://www.commerce.senate.gov/services/files/05C131FA-5011-406D-A9A1-C64BE8E81CE4>; see also Bryant Walker Smith, *Opening Statement of Professor Bryant Walker Smith for the U.S. Senate Commerce Committee's Hearing on Automated Driving*, CIS CTR. INTERNET & SOC'Y (Feb. 4, 2026), <https://cyberlaw.stanford.edu/blog/2026/02/opening-statement-of-professor-bryant-walker-smith-for-the-u-s-senate-commerce-committees-hearing-on-automated-driving-february-4-2026-2/> [hereinafter Walker Smith, *Opening Statement*].

The National Traffic and Motor Vehicle Safety Act of 1966—a monumental safety accomplishment—illustrates all of this:

- Federal motor vehicle safety standards (FMVSS) are an example of express preemption, because federal law says that, in general, a state “may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the [state] standard is identical to the” FMVSS.<sup>20</sup>
- The Act includes a savings clause specifying that state or local government may set a higher standard for the vehicles it purchases for its own use.<sup>21</sup>
- The Act includes another savings clause specifying that a manufacturer can be held liable for an injury caused by its product even if that product met all FMVSS.<sup>22</sup>
- The US Supreme Court has nonetheless held that this savings clause does not prevent all implied preemption. In one case, the Supreme Court decided that a crash victim *could not* win a lawsuit against an automaker for not having an airbag when the FMVSS offered automakers a choice between an airbag or an automatic seatbelt.<sup>23</sup>
- And yet, in another case, the Supreme Court decided that a crash victim *could* win a lawsuit against an automaker for not having a lap-and-shoulder belt when the FMVSS offered automakers a choice between lap-only belts and lap-and-shoulder belts.<sup>24</sup>

This is all really complicated—even though the preemption provisions of the National Traffic and Motor Vehicle Safety Act seem, on their face, to be straightforward. And yet it still took decades for courts to find (or arguably invent) many of the devils in the details.<sup>25</sup>

Adding even more preemption to this picture will not bring clarity. Instead, it will bring more complexity, more uncertainty, and more litigation. To see what I mean, consider the lengthy preemption language in the SELF DRIVE Act of 2026 currently under consideration in the US House of Representatives.<sup>26</sup> Here are just *some* of the genuine questions that it raises:

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<sup>20</sup> 49 U.S.C. § 30103(b)(1).

<sup>21</sup> *Id.*

<sup>22</sup> 49 U.S.C. § 30103(e).

<sup>23</sup> *Geier v. Am. Honda Motor Co.*, 529 U.S. 861 (2000).

<sup>24</sup> *Williamson v. Mazda Motor of Am.*, 562 U.S. 323 (2011).

<sup>25</sup> The National Traffic and Motor Vehicle Safety Act is not even the only federal law relevant to a discussion of preemption in the context of motor vehicle safety. The US Supreme Court has repeatedly interpreted the Federal Arbitration Act to preempt state law—even a state's determination that a class-action waiver was unenforceable for being “unconscionable.” See *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); *see also infra* (discussing forced arbitration).

<sup>26</sup> SELF DRIVE Act of 2026, H.R. 7390, 119th Cong. (2026), <https://www.congress.gov/bill/119th-congress/house-bill/7390> . If enacted, the section on “FEDERAL PREEMPTION FOR AUTOMATED

1. The bill focuses almost entirely on “manufacturers of automated driving systems and manufacturers of ADS-equipped vehicles.” But which companies would be manufacturers, and which would not?<sup>27</sup> If the term is interpreted narrowly, then AVs could conceivably reach public roads without ever having a “manufacturer” subject to the bill’s framework. But if the term is interpreted broadly, then the bill could preempt state authority over many actors associated with AV development and deployment.
2. States generally have authority over driving licenses. One approach to regulating automated vehicles is to require automated driving companies, their automated driving systems, or their vehicles to have the equivalent of a driving license. Would that approach be preempted?
3. Could a state require that every vehicle operated on public roads be constantly supervised by an attentive human driver as subsection (C)(i) seems to suggest?
4. In some states, a vehicle that is not roadworthy cannot be registered, cannot be passed during a safety inspection, or cannot be lawfully operated on public roads. Could a state restrict entire makes or models of AVs on any of these bases as subsection (C) seems to suggest?
5. Some states require automakers to register with the state (for the purpose of legal service). Is this a “generally applicable consumer protection law”? What if a state specifically required companies that are developing or deploying AVs to register?
6. It appears that proposed section 30130(c) could prohibit NHTSA from requiring a “manufacturer” of an ADS-dedicated vehicle (e.g., a robotaxi) to have even basic manual controls that would allow a first responder to carefully move the vehicle when it is disabled. Could a city or state nonetheless require such controls?
7. If a “manufacturer” seeks to operate its own robotaxi or delivery service with its own vehicles, does the state have any regulatory authority? State regulation of ridehailing, for example, could “prohibit[] in whole or in part a manufacturer from ... introducing ... into interstate commerce” its robotaxis.
8. How is subsection (A) (“a State ... may not ... prohibit[] ... a manufacturer from ... offering [an AV] for sale...”) to be reconciled with subsection (D) (“Nothing in this paragraph may be

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DRIVING SYSTEMS AND ADS-EQUIPPED VEHICLES” would presumably be codified as 49 U.S.C. § 30103(b)(3).

<sup>27</sup> 49 U.S.C. § 30102(a)(6) defines “manufacturer” as “a person (A) manufacturing or assembling motor vehicles or motor vehicle equipment; or (B) importing motor vehicles or motor vehicle equipment for resale.” But this definition is much less clear in the new and potentially diverse world of automated driving.

construed to prohibit a State ... from ... enforcing ... any law ... relating to the sale ... of [AVs]"?)?

9. Why is there no explicit reference to regulation of an AV's "operation"? Is this within or beyond the initial scope of preemption ("introducing or delivering for introduction into interstate commerce")? If so, is this within or beyond the scope of the carve-outs?
10. Would the general preemption provision prevent states from requiring that robotaxi vehicles or services be accessible to persons with disabilities—particularly when the absence of a human driver adds accessibility challenges?
11. Why does the savings clause about "liability at common law" reference compliance with proposed section 30130(b)(1)(B), with which only the US Department of Transportation can comply? And, by referencing only some provisions in existing and proposed law, does it imply that compliance with *other* provisions *could* exempt a company from this liability?
12. Federal motor vehicle safety standards generally apply to the sale of "new" (or newly imported) motor vehicles and equipment. The language about safety cases could be similarly interpreted to refer only to what a manufacturer must demonstrate at that time zero. How does the framework that this bill envisions work after a year or ten years? Are states precluded from requiring that "manufacturers" (or other companies) update their safety cases?

I'll stop at a dozen. Again, these are just *some* of the questions raised just by this bill's preemption language. If the bill becomes law, many additional questions will arise as automated driving expands and diversifies.<sup>28</sup> Moreover, even if the drafters understand what their language means and even if they succeed in explaining their understanding to others, courts faced with interpreting this sprawling text might well reach very different understandings.<sup>29</sup> And I doubt that Congress will be eager to attempt a sequel.

At this point, legislation to preemptively preempt state authority over automated driving is a problem in search of a problem. The far better approach is simply for Congress to provide direction and resources for the federal government to carefully, holistically, and proactively

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<sup>28</sup> This field will almost certainly continue to see novel "technologies, applications of those technologies, business cases for those applications, and participants in those business cases." UNIF. L. COMM'N, UNIFORM AUTOMATED OPERATION OF VEHICLES ACT (2019), <https://www.uniformlaws.org/viewdocument/final-act-29> .

<sup>29</sup> To wit: The Federal Arbitration Act, which I discuss below, "was intended to narrowly apply to disputes between merchants, not between a business and its consumers or workers"—and yet, decades later, "the Supreme Court drastically expanded" its application "to arbitration clauses in everyday contracts." H.R. Rep. No. 117-234 (2022), <https://www.congress.gov/117/crpt/hrpt234/CRPT-117hrpt234.pdf> .

regulate automated driving in a way that gives states and cities confidence. Many of these other governments will happily defer. Others may fill in the gaps. Their approaches may evolve, especially as new issues invariably arise down the road. We can embrace technical innovation on our roads as well as regulatory innovation in our "laboratories of democracy."<sup>30</sup>

Finally, because your question is about preemption, please allow me an aside: I did not understand why, during the relevant Senate hearing, preemption was discussed by others in connection with the People's Republic of China. While Congress can preempt some US state law, it cannot preempt the domestic law of China or, for that matter, any other sovereign country. And under current Chinese law, a company must negotiate with *each individual city* in which it seeks to deploy automated vehicles without a safety driver.

**Senator Duckworth, you asked about accessibility.**

*1. Would you be concerned about Federal legislation preempting State and local laws adopting accessibility requirements for the benefit of people with disabilities?*

I am very concerned about this possibility. Even if preemption language is not *intended* to interfere with state and local efforts toward accessibility, that could nonetheless be the *effect*. I discuss preemption more extensively in my answer to Senator Klobuchar above.

*2. What would be the effect of forced arbitration agreements imposed on AV users on mobility and safety for the disabled community?*

In my view, a "*trustworthy* company might still arbitrate—but in a way that is accessible, transparent, voluntary, reviewable, and genuinely remedial. An *untrustworthy* company designs and implements a system that undermines these very principles."<sup>31</sup> Forced arbitration is the quintessential example of the latter. It is a betrayal of the public's trust.

Forced arbitration privileges the powerful over the powerless. It is not a serious remedy, and it therefore denies the seriousness of the rights and harms subject to it. Because clauses mandating arbitration are so ubiquitous in ordinary consumer contracts, individuals have no real power to avoid it. And because of how the Federal Arbitration Act is interpreted, states have no real power to protect their own residents from it.

When used by powerful providers of mobility services (including ridesharing as well as robotaxis), forced arbitration can be especially pernicious for people with disabilities.

Forcing arbitration on people with disabilities may mean coercing those with the fewest alternatives. If I don't like a ridehailing company's terms of service, I can choose to drive

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<sup>30</sup> *Laboratories of Democracy*, WIKIPEDIA (last updated Dec. 20, 2025), [https://en.wikipedia.org/wiki/Laboratories\\_of\\_democracy](https://en.wikipedia.org/wiki/Laboratories_of_democracy).

<sup>31</sup> Walker Smith, *supra* note 3.

myself in my used car.<sup>32</sup> But someone who is blind or otherwise cannot drive does not have this same choice. In other words, those for whom automated driving is supposed to offer the most freedom are also the ones most captive to the companies promising that freedom.

Conventional ridehailing shows how people already experience this vulnerability. Ridehailing drivers routinely strand blind passengers with guide dogs at the curb—speeding away without a word, locking their doors, or shouting “no dogs allowed.”<sup>33</sup> In one survey of the blind and low-vision community, 60 percent of those who primarily used ridehailing reported discrimination in these services.<sup>34</sup> A wheelchair user denied a ride faces a similar predicament—often unable to drive or reach another mode of transit and dependent on the next driver who may refuse to serve them as well. And nearly 40 percent of rideshare passengers who use wheelchairs have reported ridehailing service denial.<sup>35</sup>

Disability-based discrimination is often systemic, and the Americans with Disabilities Act was designed to create systemic accountability. And yet forced arbitration is intentionally designed to prevent systemic claims. Arbitration clauses often include class-action waivers, and the US Supreme Court has interpreted the Federal Arbitration Act to preempt states from prohibiting these waivers.<sup>36</sup> The result is systemic failures atomized into individual disputes too small to pursue or lacking the pattern evidence that may be necessary to win.<sup>37</sup>

In these ways, forced arbitration can also prevent the public from learning about pervasive problems with a product, service, company, or industry. It makes victims invisible. It conflates good companies with bad companies. And it wrests from judges and juries their important role in expressing community values. Forced arbitration on individuals is like preemptive preemption on states: They each silence the voices we most need to hear at the times we most need to hear them.<sup>38</sup>

Congress can correct how the Federal Arbitration Act is interpreted and thereby return to states that power to protect their own residents. Congress can also protect people directly:

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<sup>32</sup> While my car was manufactured by a company that has no contractual relationship with me, forced arbitration is also a problem in the automotive context.

<sup>33</sup> Sylvia A. Brady et al., *Transportation, Ride-Hailing and Discrimination Among the Blind and Low Vision Community*, 36 *Transp. Rsch. Interdisc. Persp.* 101837, at 6 (2026), <https://www.sciencedirect.com/science/article/pii/S2590198226000023>.

<sup>34</sup> *Id.*

<sup>35</sup> Mahtot Gebresselassie, *Wheelchair Users' Perspective on Transportation Service Hailed Through Uber and Lyft Apps*, 2677 *Transp. Rsch. Rec.* 1164 (2023), <https://journals.sagepub.com/doi/pdf/10.1177/03611981221140369>.

<sup>36</sup> *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); *see also supra* note 25.

<sup>37</sup> *See, e.g., supra* (discussing vehicle-level and fleet-level approaches to accessibility).

<sup>38</sup> Please see my discussion of preemption, *supra*.

In 2022, it *overwhelmingly* passed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act to let victims of sexual assault and harassment turn to the courts.<sup>39</sup>

A final note: In writing this answer, I was reminded of how, in 1838, one judge described the tremendous potential of railroads. Their promise of "such noble ends," he continued, was the very reason why "we must engraft the railroad system in the affections, as well as the interest of the people; and the parents of so much enterprise, wealth, and national good, must not be justified wrong, else they might become the tyrants of the day."<sup>40</sup>

*3. Are there unique safety and operational considerations with respect to AVs and people with disabilities that policymakers should take into account as we consider AV legislation?*

Yes. It is important that innovation and inclusion go hand in hand. As the US Department of Transportation's Transforming Transportation Advisory Committee (TTAC) wrote:

[I]nnovation is about more than just new technologies. It's also about new approaches, policies, and frameworks. The Safe System Approach embraces redundancy so that death is not the inevitable result of failure. The Americans with Disabilities Act (ADA) boldly envisions a society just as open to those with mobility issues and other disabilities as to those without. Of course, we are still far from these goals. And yet every day, to take just one example, hundreds of millions of ADA-required curb cuts provide equal access to people in wheelchairs—and benefit parents who are pushing strollers, travelers who are pulling suitcases, and people who might otherwise stumble on a step.<sup>41</sup>

But as you correctly caution, the relationship between technology and accessibility is complex. Automated driving could improve quality of life for many people who cannot drive today or who may be unable to drive tomorrow. It could offer better options for travel as well as better alternatives to that travel. At the same time, automated driving could create technological challenges for people who currently rely on the assistance that human drivers provide. And it could shift some transportation services away from a conventional transit model and thereby *potentially* away from *some* associated federal, state, and local requirements for accessibility.

Congress should first do no harm. But, as I described above, preemption that is broad or even just clumsy could disempower the state and local governments that may seek to prioritize accessibility. This would be harmful.

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<sup>39</sup> Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, Pub. L. No. 117-90, 136 Stat. 26 (2022) (codified at 9 U.S.C. §§ 401-402), <https://www.congress.gov/bill/117th-congress/house-bill/4445/text> . The Act passed the House 335-97 and the Senate by voice vote.

<sup>40</sup> *State v. Tupper*, 23 S.C.L. 135, 141 (S.C. App. L. 1838).

<sup>41</sup> TTAC, *supra* note 10.

Beyond that, Congress should reinvigorate, direct, and support prior accessibility initiatives at the federal level, including an advisory committee on transportation equity,<sup>42</sup> NHTSA's report to Congress on AV accessibility,<sup>43</sup> USDOT's Inclusive Design Challenge,<sup>44</sup> and the US Access Board's work on AVs.<sup>45</sup> These efforts should also draw on outside expertise, including relevant work by the Consortium for Constituents with Disabilities (CCD) Transportation Task Force,<sup>46</sup> the American Association of People with Disabilities,<sup>47</sup> SAE International,<sup>48</sup> and others.<sup>49</sup>

If Congress passes legislation to specifically and explicitly regulate automated driving, it could:

- Direct NHTSA to prioritize FMVSS exemption requests for vehicles that incorporate inclusive design.<sup>50</sup>

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<sup>42</sup> Transportation Equity Act, H.R. 2167, 119th Cong. 2d Sess. (2026), <https://www.congress.gov/bill/119th-congress/house-bill/2167> .

<sup>43</sup> NHTSA, RESEARCH ON THE ACCESSIBILITY OF AUTOMATED VEHICLES REPORT (Dec. 2022), [https://www.nhtsa.gov/sites/nhtsa.gov/files/2022-12/Report-to-Congress-Research-on-the-Accessibility-of-Automated-Vehicles-tag\\_0.pdf](https://www.nhtsa.gov/sites/nhtsa.gov/files/2022-12/Report-to-Congress-Research-on-the-Accessibility-of-Automated-Vehicles-tag_0.pdf) .

<sup>44</sup> *Inclusive Design Challenge*, U.S. DEP'T OF TRANSP. (last updated Apr. 25, 2024), <https://www.transportation.gov/accessibility/inclusivedesign>.

<sup>45</sup> *Inclusive Design of Autonomous Vehicles*, U.S. ACCESS BD. (July 2021), <https://www.access-board.gov/av/> .

<sup>46</sup> Letter from Consortium for Constituents with Disabilities Transp. Task Force to Ted Cruz, Chairman, & Maria Cantwell, Ranking Member, S. Comm. on Com., Sci. & Transp. (Feb. 4, 2026), <https://dredf.org/wp-content/uploads/2026/02/2026.02.04-Commerce-AV-Hearing-Disability-Letter-for-the-Record-Access-Pass.pdf> .

<sup>47</sup> *We Will Ride*, AAPD (2022), <https://www.aapd.com/we-will-ride> .

<sup>48</sup> SAE International (formerly the Society of Automotive Engineers) has developed several standards on vehicle accessibility, including two on robotaxis specifically. See *Vehicle Accessibility*, SAE INT'L, <https://www.sae.org/taxonomies/vehicle-accessibility> (last visited Feb. 26, 2026); *SAE J3171: Identifying Automated Driving Systems-Dedicated Vehicles (ADS-DVs) Passenger Issues for Persons with Disabilities*, SAE INT'L (Sept. 24, 2025), [https://www.sae.org/standards/j3171\\_202509-identifying-automated-driving-systems-dedicated-vehicles-ads-dvs-passenger-issues-persons-disabilities](https://www.sae.org/standards/j3171_202509-identifying-automated-driving-systems-dedicated-vehicles-ads-dvs-passenger-issues-persons-disabilities) ; *SAE J3261: Resources for Accommodating the Needs of Persons with Disabilities Using ADS-DVs*, SAE INT'L (forthcoming 2026), <https://www.sae.org/standards/j3261-resources-accommodating-needs-persons-disabilities-using-ads-dvs> . J3261 acknowledges that the document itself is not accessible to persons using screen readers. I hope and expect that this will be remedied in the next version.

<sup>49</sup> See, e.g., Fahimeh Golbabaie et al., *Enabling Mobility and Inclusion: Designing Accessible Autonomous Vehicles for People with Disabilities*, 154 CITIES 105333 (Nov. 2024), <https://www.sciencedirect.com/science/article/pii/S026427512400547X> .

<sup>50</sup> Walker Smith & Wansley, *supra* note 2. Some past bills would have increased the number of vehicles per manufacturer per year that NHTSA can exempt from a Federal Motor Vehicle Safety Standard. But while NHTSA is limited in its ability to grant exemptions to those standards, the

- Specify that an automated driving company required to develop a safety case must address interaction with and access for persons with disabilities.<sup>51</sup>
- Clarify how the Americans with Disabilities Act (ADA) applies to the various companies involved in the provision of on-demand rides (regardless of whether those rides are in conventional or automated vehicles).<sup>52</sup>

Unfortunately, the accessibility of automated vehicles and services is a contentious issue—even more so at a time when the rights of people with disabilities are under attack. I can at most offer a few thoughts:

First, it is important to regulate automated driving in a way that does not unfairly advantage conventional driving, and it is important to regulate shared vehicles in a way that does not unfairly advantage personal vehicles.<sup>53</sup> But if travel shifts from either personal vehicles or conventional public transit to robotaxis, then specifically ensuring the accessibility of these robotaxis will become essential. (So too for local delivery robots.)

Second, it is often said that automated driving blurs the distinction between driver and vehicle. This matters for the regulation of both safety and accessibility. Whether officially or unofficially, professional drivers often provide specific assistance to riders with disabilities, such as securing a rider's wheelchair.<sup>54</sup> Automating the "dynamic driving task" does not

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agency has the authority to change those standards in a way that obviates the need for those exemptions. See Bryant Walker Smith, *Here's Where Federal Automated Driving Law Stands Near the End of the Biden Administration*, CIS CTR. INTERNET & SOC'Y (Nov. 18, 2024), <https://cyberlaw.stanford.edu/blog/2024/11/heres-where-federal-automated-driving-law-stands-near-the-end-of-the-biden-administration> .

<sup>51</sup> The current draft of the SELF DRIVE Act of 2026 under consideration in the US House would require "manufacturers" to develop safety cases but does not explicitly include accessibility in them. See *supra* note 27. To reiterate what I emphasized in my opening statement at the hearing: "Safety is a marriage, not a wedding. Safety is a lifelong commitment that continues as long as an AV is on the road. It's not just a one-time test or certification or checklist. A credible safety case must be a living document that is clearly supported, robustly interrogated, and routinely updated. Vehicles placed on our roads stay there for decades and therefore need oversight for decades." Walker Smith, *Opening Statement*, *supra* note 19.

<sup>52</sup> For an analysis of the disputed status of companies such as Uber and Lyft under the ADA, see MAEVE MOYNIHAN & JILL L. BEZYAK, RAPID RSCH. REP., WHAT DO RIDERS AND DRIVERS NEED TO UNDERSTAND REGARDING THE ADA BEFORE RIDING WITH OR DRIVING FOR A RIDESHARE COMPANY? (2025), [https://rockymountainada.org/sites/default/files/2025-07/Rideshare%20and%20the%20ADA\\_Final.pdf](https://rockymountainada.org/sites/default/files/2025-07/Rideshare%20and%20the%20ADA_Final.pdf) .

<sup>53</sup> See TTAC, *supra* note 10, at 91-92; Bryant Walker Smith, *Ethics of Artificial Intelligence in Transport*, in THE OXFORD HANDBOOK OF ETHICS OF AI (Markus D. Dubber et al. eds., 2020), <https://ssrn.com/abstract=3463827> ; Walker Smith & Wansley, *supra* note 2.

<sup>54</sup> Walker Smith & Wansley, *supra* note 2. Of course, some professional drivers do not provide this assistance. See, e.g., Golbabaie et al., *supra* note 49.

necessarily mean automating these other tasks and, absent regulation, might therefore mean simply not performing them.

Third, there is significant disagreement—both in policy and in law—about whether and what kinds of accessibility should be at the vehicle level or the fleet level.<sup>55</sup> In the context of conventional transportation, unfortunately, a fleet-level approach rarely provides anything close to the “equivalent service” described by the ADA.

Fourth, a hybrid between the vehicle and fleet levels might be necessary to account for the wide range of accessibility needs. Some attributes of accessibility, such as audible and visual communications, should be universal as a basic part of safe design. Other attributes, particularly those for which automation is still no match for humans, may require a fleet approach. And here a model analogous to the corporate average fuel economy (CAFE) standards and associated credits might create more of a market for accessible services.

Fifth, California already collects a fee of five cents per Uber and Lyft trip to fund its TNC Access for All Fund, which in turn supports “businesses or nonprofits that provide transportation to people with disabilities, especially people who require” wheelchair-accessible vehicles.<sup>56</sup> This is laudable. But it also brings me back to my first point: Funding adequate accessibility should be the responsibility of all taxpayers or at least all road users.

I would like to see Congress go further than this, especially at a time when our growing senior population is helping to highlight the substantial unmet mobility needs of people with disabilities. The federal Enhanced Mobility of Seniors and Individuals with Disabilities Program already directs some money from the Highway Trust Fund to specialized public transportation.<sup>57</sup> I would supplement this with a “Cent for Seniors”—an increase in the federal fuel excise tax of a penny per gallon directed toward accessible mobility, including *viable* automated services.

### **Senator Blunt Rochester, you asked about accessibility, American competitiveness, and our workforce.**

**1. Accessibility.** *Autonomous vehicles (AV) have the potential to improve accessibility and mobility for individuals with disabilities. As proponents of federal AV legislation consider potential preemption of state and local laws, I want to ensure the federal legislation doesn't undermine existing benefits for individuals with disabilities. What should Congress consider in*

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<sup>55</sup> See, e.g., Golbabaie et al., *supra* note 49; MOYNIHAN & BEZYAK, *supra* note 52.

<sup>56</sup> Walker Smith & Wansley, *supra* note 2; see CAL. PUB. UTIL. CODE § 5440.5(a)(1); *Transportation Network Company (TNC) Access for All Program*, CAL. PUB. UTILS. COMM'N (2024), [https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/tlab/accessforall/tnc-access-for-all\\_factsheet\\_2024-final.pdf](https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/tlab/accessforall/tnc-access-for-all_factsheet_2024-final.pdf).

<sup>57</sup> 49 U.S.C. § 5310; see also WILLIAM J. MALLETT, CONG. RSCH. SERV., R47002, FEDERAL PUBLIC TRANSPORTATION PROGRAM: IN BRIEF (Apr. 18, 2025), <https://www.congress.gov/crs-product/R47002>.

*federal AV legislation to ensure the needs of individuals with disabilities are taken into account?*

Please see my answer to Senator Duckworth's question above.

**2. American Competitiveness.** *The U.S. is in a global race to develop and deploy emerging technologies, including AVs. To do so successfully, we must have a robust federal workforce to ensure these technologies are developed responsibly. However, in the wake of the Trump administration's federal workforce cuts, the National Highway Traffic Safety Administration (NHTSA), the regulatory body for AV deployment, was significantly reduced in size. How will these cuts impact America's ability to compete on a global scale?*

NHTSA is a tiny agency. Its total headcount is roughly equivalent to that of a single Amazon warehouse, and its automated driving team would be easily outnumbered by the workers in a single McDonald's restaurant. The inexplicable cuts to this automation team were particularly devastating in terms of capacity, expertise, institutional knowledge, and morale. These circumstances are also likely to make future recruitment more challenging.

Even before these cuts, NHTSA was struggling. European roads are far safer than American roads,<sup>58</sup> in part because new vehicles in the European Union must meet many important safety requirements that new vehicles in the United States need not.<sup>59</sup>

For years, NHTSA has routinely missed Congressional deadlines for progress on critical safety standards<sup>60</sup> and declined to implement safety recommendations from the National

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<sup>58</sup> Int'l Transp. Forum, *Road Safety Annual Report 2025* (2025), <https://www.itf-oecd.org/sites/default/files/docs/irtad-road-safety-annual-report-2025.pdf> ; U.N. Econ. Comm'n for Eur., *Statistics of Road Traffic Accidents in Europe and North America*, vol. LVII (2023), <https://w3.unece.org/roadsafety/2023> ; Angie Schmitt, *Why the U.S. Leads the Developed World on Traffic Deaths*, Streetsblog USA (Dec. 13, 2018), <https://usa.streetsblog.org/2018/12/13/why-the-u-s-trails-the-developed-world-on-traffic-deaths> .

<sup>59</sup> See Eur. Transp. Safety Council, *Comparative Overview EU-US Vehicle Standards* (Nov. 20, 2025), <https://etsc.eu/comparative-overview-eu-us-vehicle-standards> .

<sup>60</sup> See, e.g., U.S. Gov't Accountability Off., GAO-22-104635, *Traffic Safety: Implementing Leading Practices Could Improve Management of Mandated Rulemakings and Reports* (Apr. 2022), <https://www.gao.gov/assets/gao-22-104635.pdf> ; Nat'l Highway Traffic Safety Admin., *Rulemaking Status Report* (Dec. 2024), <https://www.nhtsa.gov/sites/nhtsa.gov/files/2024-12/report-congress-status-rulemakings-december-2024.pdf> ; Letter from Rep. Debbie Dingell & Sen. Ben Ray Lujan to Jonathan Morrison, Adm'r, NHTSA (Sept. 19, 2025), [https://debbiedingell.house.gov/uploadedfiles/9.19.2025\\_dingell-lujan\\_letter\\_to\\_nhtsa\\_on\\_halt\\_act.pdf](https://debbiedingell.house.gov/uploadedfiles/9.19.2025_dingell-lujan_letter_to_nhtsa_on_halt_act.pdf) ; Press Release, Sen. Edward J. Markey, Senators Markey, Blumenthal Urge NHTSA to Quickly Implement Life-Saving Traffic Safety Provisions (Nov. 20, 2024), <https://www.markey.senate.gov/news/press-releases/senators-markey-blumenthal-urge-nhtsa-to-quickly-implement-life-saving-traffic-safety-provisions> ; Press Release, Sen. Chris Van Hollen, On Anniversary of Bipartisan Infrastructure Law, Van Hollen, Markey, Blumenthal, Colleagues Call on

Transportation Safety Board (NTSB). NTSB's chair has said that NHTSA's inaction "tells me you're not serious about safety,"<sup>61</sup> and NHTSA's former deputy has described the agency as "chronically underfunded and over-politicized."<sup>62</sup>

Our dangerous roads are a direct threat to our competitiveness. Every year, crashes cause some \$340 billion in economic costs<sup>63</sup>—money that could otherwise be used to invest, innovate, and compete. Quality-of-life harm amounts to some \$1 trillion—an extraordinary number that still fails to capture the lifelong or even multigenerational effect of losing a partner, parent, or child. We are spending our national wealth on funerals instead of futures.

The rest of the world sees that we are not doing well. I spent most of 2025 in Asia and Europe, and I watched as attitudes toward the United States changed. To be blunt: We went from a leader to a bully. In the process, we undermined our own institutions, companies, and technologies. We taught the world to look elsewhere. And when trust no longer tips the scales, you might as well choose the Chinese car that is cheaper, cleaner, and cooler.

**3. Workforce.** *With the rollout of new technologies like AVs, we have seen their integration into commercial industries, like trucking. While I anticipate that some new jobs could be created, including terminal operators and specialized maintenance positions, I am concerned that these new job opportunities will pale in quantity to the jobs lost due to these new technologies. Can these new positions sustain the potential job losses in these industries? What should we do now to prepare for these changes to the affected industries?*

Your concern is justified, and I don't have good answers. In understanding this issue, I start with four premises:

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NHTSA to Implement Critical Safety Provisions (Nov. 15, 2022), [https://www.vanhollen.senate.gov/news/press-releases/on-anniversary-of-bipartisan-infrastructure-law-van-hollen-markey-blumenthal-colleagues\\_call-on-nhtsa-to-implement-critical-safety-provisions](https://www.vanhollen.senate.gov/news/press-releases/on-anniversary-of-bipartisan-infrastructure-law-van-hollen-markey-blumenthal-colleagues_call-on-nhtsa-to-implement-critical-safety-provisions) ; Press Release, Sen. Edward J. Markey, Senators Markey and Blumenthal Urge NHTSA to Finalize Vehicle Safety Rulemakings Required by Law (Apr. 12, 2018), <https://www.markey.senate.gov/news/press-releases/senators-markey-and-blumenthal-urge-nhtsa-to-finalize-vehicle-safety-rulemakings-required-by-law> .

<sup>61</sup> Katie Krupnik, NHTSA Is over 5 Months Late in Meeting Deadline to Strengthen Car Seats, CBS News (Apr. 3, 2024), <https://www.cbsnews.com/news/nhtsa-is-over-five-months-late-in-meeting-deadline-to-strengthen-car-seats> .

<sup>62</sup> Myron Levin & Eli Wolfe, *In Battle Against 'the Highway Disease,' NHTSA Attacked as Being Asleep at the Wheel*, Md. Matters (Dec. 31, 2020), <https://marylandmatters.org/2020/12/31/in-battle-against-the-highway-disease-nhtsa-attacked-as-being-asleep-at-the-wheel> .

<sup>63</sup> Lawrence Blincoe et al., Nat'l Highway Traffic Safety Admin., DOT HS 813 403, *The Economic and Societal Impact of Motor Vehicle Crashes*, 2019 (rev. Feb. 2023), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813403> .

1. The AI revolution might be merely the latest iteration of creative destruction; new jobs will replace old jobs.
2. The AI revolution might instead be an unprecedented shift to a state in which labor and capital are fully interchangeable; new jobs will *not* replace old jobs.
3. We don't know which of these two predictions will prove more accurate (or when).
4. *Regardless*, we do know that the transition, like those of past industrial revolutions, will be painful to the individuals and communities who are negatively impacted.

There is valuable work on these issues, especially by the National Academies.<sup>64</sup> The US Department of Transportation's Transforming Transportation Advisory Committee (TTAC) made several key recommendations on automated driving specifically while also recognizing "that disruptive technologies will not be limited to ADS and that workforce implications will not be limited to professional drivers."<sup>65</sup> I support these recommendations.

I would particularly stress the importance of "creating and maintaining early-warning systems and feedback loops that involve these diverse stakeholders, state governments, other federal agencies, and other potential sources of near-real-time workforce information."<sup>66</sup> This is because effective policy will require accurate and timely understanding of changes in real-world conditions.

I would further suggest that, in developing this policy, our leaders consider a few key points:

First, everyone in the United States should share in the wealth they are helping to create. We are all contributing data and, in many cases, valuable intellectual property for the development of AI systems. Many human employees are currently training their computer replacements, whether they realize it or not. And many ordinary people are subsidizing these systems through the externalities—including resource depletion and many forms of pollution—that they are bearing, again whether they realize it or not. And while this broad sharing of wealth is ultimately in the interests of those who seek to directly profit from these technologies, collective action problems mean that it is unlikely to happen without government action.

Second, there is and will likely continue to be a tremendous need for human services of all kinds. But market failures mean that there is not a commensurate economic demand for many of these services. Childrearing, eldercare, civic participation, community engagement, friendship, mentoring, good neighborliness, emotional support, cultural development, learning, teaching, reconciliation, pro bono representation, and many other tasks are vital to

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<sup>64</sup> NAT'L ACADS. OF SCIS., ENG'G, & MED., *ARTIFICIAL INTELLIGENCE AND THE FUTURE OF WORK* (2025), <https://doi.org/10.17226/27644>.

<sup>65</sup> TTAC, *supra* note 10, at 59-63.

<sup>66</sup> *Id.*

our humanity—and in many cases should not be performed exclusively by computers. And yet they are often undercompensated or even uncompensated and hence underperformed. Automation and financialization may shift even more tasks onto individuals or else abdicate them entirely. It is therefore imperative that any discussion of the workforce start with a holistic and comprehensive conception of work—and look for ways to create space and even compensation for work that has true social value.<sup>67</sup>

Third, workforce policy should promote human flourishing. Some jobs—or at least job tasks—*should* disappear. Jobs should not be dangerous, dreary, depressing, exploitative, or oppressive. They should be *livelihoods* that give the people who hold them an opportunity for control, community, and contribution. This will mean different things to different people, as it should. Both employment and automation should be tools in our individual and collective “pursuit of happiness.”<sup>68</sup>

Fourth, we should try to cultivate employment opportunities through perpetual research and development. Significant federal research decades ago led to the automated driving industry we have today. And at least so far, this industry has created far more jobs than it has eliminated. These include highly paid researchers as well as all the other professionals who support them, from janitors to cooks to therapists. By the time automated driving significantly impacts truck and taxi drivers, we should ideally be well on our way to our next set of incredible innovations. But this requires *foundational research*: basic science that often requires enormous investments of time and money, fails to produce the desired results, and has few if any obvious paths to commercialization. Only governments are in the position to fund this research. The Chinese government is doing so. Ours, increasingly, is not.

Fifth, law has long created structures to manage scarcity, exclusivity, and control. These include early property rights (think fences), more recent intellectual property rights (think patents), concessions, common carriers, and corporations generally. The AI revolution may require similar innovations to help individuals capture the economic value of not only their labor but also their ideas and their information. Courts will be (and in some cases already are) involved in these conversations, but so too should governments more broadly.

Sixth, it will also be important to conceive and empower new and existing collectives beyond governments and companies. Trade and labor unions are a classic example. In the future, agentic AI might even help individuals create a more level playing field with companies by automatically identifying and coordinating the collective market power of people with shared needs and values.

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<sup>67</sup> See generally Bryant Walker Smith & Ying Wang, *Role- and Task-Based Approaches to Responsible Automation* (working paper).

<sup>68</sup> Bryant Walker Smith, *For Humankind*, Keynote Remarks at the Inauguration of the Joint Academy on Future Humanity (June 28, 2025), [https://newlypossible.org/files/presentations/2025-06-28\\_FutureHumanitySpeech\\_BryantWalkerSmith.pdf](https://newlypossible.org/files/presentations/2025-06-28_FutureHumanitySpeech_BryantWalkerSmith.pdf).

Seventh, international cooperation will be imperative. A race to the bottom helps no one. People around the world share many of the same hopes and fears, even if we express them differently. And increasingly, we really are all in this together.<sup>69</sup>

**To conclude:**

I hope my spoken testimony showed a brevity that is admittedly lacking in these written answers—particularly since I'm also annexing two additional relevant documents. The first is my opening statement at the hearing. The second is the final report of the US Department of Transportation's Transforming Transportation Advisory Committee.

I appreciate that you have read this far and, more importantly, that you are approaching these important issues so thoughtfully. Please reach out if I can be of any assistance.

Sincerely,

/Bryant/

Bryant Walker Smith

**Annex 1:** My opening statement at the Senate Committee on Commerce, Science, and Transportation's Hearing on the Future of Self-Driving Cars.

**Annex 2:** The 2024 report of the US Department of Transportation's Transforming Transportation Advisory Committee (TTAC).

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<sup>69</sup> Much of my work seeks to foster international collaboration. See, e.g., Bryant Walker Smith & Sven Beiker, *We Rode in Dozens of Driverless Robotaxis in China. Here's What We Saw—And Our Advice for Other Curious Travelers*, BUS. INSIDER (Jan. 31, 2026), <https://www.businessinsider.com/the-ultimate-guide-for-taking-a-robotaxi-in-china-2026-2> ; Bryant Walker Smith, *Initial Thoughts on "Road Safety Challenges Posed by the Use of Automated Vehicles in Traffic That an International Legal Instrument Could Adequately Address"*, GE.3-03-02, Global Forum for Road Traffic Safety (May 2022); Bryant Walker Smith et al., *A Path for Cooperation Between Law Schools in China and the United States*, 11 PENN. ST. J.L. & INT'L AFF. 142 (2023), <https://insight.dickinsonlaw.psu.edu/jlia/vol11/iss2/7> . Additional publications are available at <https://newlypossible.org> .