

July 24, 2023

The Honorable Gus Bilirakis, Chair
The Honorable Jan Schakowsky, Ranking Member
Committee on Energy and Commerce
Innovation, Data, and Commerce Subcommittee
United States House of Representatives
Washington, D.C. 20510

RE: Lack of consumer protection from forced arbitration clauses in SELF DRIVE Act

Dear Chair Bilirakis and Ranking Member Schakowsky:

We the undersigned, on behalf of the members of each of our groups individually, and all drivers nationwide, write today about a vital consumer protection that should be a part of the proposed SELF DRIVE Act – protection from forced arbitration clauses.

Car makers say autonomous vehicles (AVs) promise a future absent of driver and pedestrian fatalities, cars without steering wheels or brakes, and commutes lacking stress or traffic. Yet, those of us who are focused on consumer safety and rights have at least one more “freedom” to add to this list: AVs should be free of forced arbitration clauses.

An existing clause in the bill, Section 3, prohibits the preemption of existing state common law. This provision should act to protect the rights of consumers if something were to go horrifically wrong due to the design of these futuristic machines. However, at a time when so much is unknown about the safety performance of these vehicles in the real world, there is no provision which prohibits the inclusion of a mandatory arbitration clause into contracts with consumers using these vehicles. Whether they are in the terms of service of autonomous vehicle rideshare companies or in future potential ownership or leasing agreements, mandatory arbitration clauses should not be allowed as a means to shield irresponsible AV companies from civil claims.

As you know, forced arbitration contract terms require consumers to adjudicate claims in forums that do not have the protections of the legal system—the rules of evidence and discovery do not apply, there is no requirement that arbitrators follow the law, there are no juries, and there is little to no opportunity for witness depositions. Moreover, arbitration proceedings are secretive, and the findings of arbitrators are seldom appealable. Additionally, because arbitration firms rely on repeat customers for their profits, it is unlikely that arbitrators will find for a consumer over the corporation likely to provide additional business in the future.

The potential for inserting forced arbitration clauses into a contract between a manufacturer and an individual consumer is ever present and abets an alternate system of justice when the inevitable defects in new technology occur. Such a result would create yet another incentive for unscrupulous manufacturers to put shareholders' interests ahead of safety concerns.

Unfortunately, as safety advocates we have seen this scenario play out before with consumers and cars. One of the most recent examples has been in the context of lemon laws. It was a difficult fight to see every state and the District of Columbia enact statutes protecting consumers if they happen to purchase a defective automobile, commonly known as a "lemon." If a consumer can show that the car he or she bought is defective and the manufacturer fails to honor the warranty and repair the defect - lemon laws assist that consumer in getting fairly compensated in order to get a new, working, vehicle. Few would dispute that, under both federal and state laws, consumers have the right to go to court to enforce their warranty rights, particularly in such a situation. In states where arbitration is required, it must be non-binding in order to preserve the consumer's right to trial.

Despite these legal protections, for years now the auto industry has been emboldened by the intrusion of forced arbitration in other fields. As a result, it is all too common for consumers to be deprived of their federal and state rights by contracts conditioned on acceptance of forced arbitration as a means to resolve disputes. We have long believed that when a company makes a defective vehicle, they should use their engineers to build a better vehicle, and not their lawyers to find a legal loophole to avoid responsibility. To be clear, forced arbitration has no place in rideshare agreements or in the sale or lease of automobiles, be they used or new, human driven or autonomous.

Arbitration, when voluntarily consented to by both parties post-dispute is a fine dispute resolution mechanism. Yet, the use of binding arbitration clauses continues to proliferate. Waymo's recent partnership with Uber to provide autonomous rideshare raises significant questions in this area, since Uber has zealously defended binding arbitration clauses at the expense of consumers for many years now, and Waymo currently uses forced arbitration as well. Future self-driving vehicles may be purchased or leased directly by consumers from multi-national manufacturers, creating an even greater power imbalance than when buying from a local dealership, enabling foreign manufacturers to insert forced arbitration provisions directly into consumer sales contracts.

This moment presents an opportunity to ensure that a practice designed to deprive consumers of their constitutional rights not be allowed to continue into the next generation of vehicles. Importantly, there is precedent in the area of forced arbitration and cars: 15 U.S.C. § 1226, the Motor Vehicle Franchise Contract Dispute Resolution Process Act. Passed into law in 2002, this law prevents auto manufacturers from forcing arbitration clauses on their franchisees, without consent. Consumers deserve the same rights when it comes to driverless vehicles.

Thank you for your attention to this important matter,

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