



December 3, 2018

The Honorable Elaine Chao  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

RE: Preparing the Future of Transportation: Automated Vehicles 3.0 (ISBN 978-0-16-094944-9)

Dear Secretary Chao:

On behalf of the nation’s governors, legislatures, cities, state transportation officials, state motor vehicle administrators and highway safety officials, we appreciate the opportunity to comment on the Department of Transportation’s (USDOT) recently released, “Preparing for the Future of Transportation: Automated Vehicles 3.0” (AV 3.0).

**Clarification of Federal and Non-Federal Authority Over Motor Vehicle “Performance”**

The regulation of motor vehicle safety, which includes the design, construction and performance of a motor vehicle (in the traditional manner, as defined in Title 49 Sections 30102 and 30111) is, and should remain, a federal obligation. USDOT appears to confirm this position on page 6, where the document affirms the nexus of its authority to issue motor vehicle safety standards. However, state and local governments are the primary authority concerning operational safety, including regulating the operation of motor vehicles after such vehicles have been constructed, the operators of those motor vehicles, as well as establishing the rules of the road on how motor vehicles can be safely operated on public roadways.

The federal authority cited above related to the safety aspects of the design, construction and performance of a motor vehicle clearly does not include compliance with the traffic laws, rules of the road, or the operation of a motor vehicles of a state or political subdivision of a state. This well-established structure for state and federal authority was endorsed by the Senate Committee on Commerce, Science and Transportation in its [written report No. 115-187](#) in response to passage of

S. 1885, the American Vision for Safer Transportation through Advancement of Revolutionary Technologies Act or the “AV START Act.” In the committee’s report, it noted:

“The Committee understands that since it was first enacted in 1966, the National Traffic and Motor Vehicle Safety Act (Safety Act) has always contained a provision preempting States and political subdivisions of States from adopting or enforcing a standard “applicable to the same aspect of performance of a motor vehicle” as a FMVSS. The term “performance” in this section is intended to be consistent with NHTSA’s authority under the Safety Act as it relates to vehicle or equipment performance and is not intended to be broadened beyond NHTSA’s traditional interpretation, which excludes vehicle compliance with or the enforcement of State and local traffic laws.”

Although USDOT appears to similarly affirm this structure on page 18, unfortunately the document on page 6 states, under the heading Safety Authority Over ADS-Equipped Vehicles and Equipment, that “NHTSA’s application of federal safety standards to the performance of ADS-equipped vehicles and equipment is likely to raise questions about preemption and the future, complementary mix of federal, state and local powers. The Department will carefully consider these jurisdictional questions as NHTSA develops its regulatory approach to ADS and other automated vehicle technologies so as to **strike the appropriate balance between the federal Government’s use of its authorities to regulate the safe design and operational performance of an ADS-equipped vehicle and the state and local authorities’ use of their traditional powers.**”

Further, USDOT’s recently released Advanced Notice of Proposed Rule Making (ANPRM) on the “Pilot Program for Collaborative Research on Motor Vehicles with High or Full Driving Automation” (Docket No. NHTSA-2018-0092) states NHTSA’s plans to regulate AV decision-making systems because of the critical relationship between it and the safety of the vehicle. Though the ANPRM affirms that enforcement of traffic laws will remain the role of state and local governments, this description is inadequate, internally inconsistent, and warrants clarification.

Under the proper federal-state framework, states and local governments retain the authority not only to enforce but to originate and establish laws and regulations governing the operation of motor vehicles on a public road (be they operated by a human driver or a vehicle decision-making system). Were the federal government to encroach into this space, it would violate the higher framework otherwise established by AV 3.0 and proposed in Congress, and could inadvertently create building blocks for a field preemption of an unacceptable volume of state and local motor vehicle laws and regulations.

We urge USDOT to clarify its intent that any federal regulation of operational performance of autonomous vehicles or “a vehicle decision-making system” is actually limited to the vehicle’s internal capabilities to engage in safe operation. For example, USDOT can require that a vehicle be able to properly identify and observe a stop sign, but the sole authority to establish laws requiring observation of such stop sign, and the enforcement, thereof, will continue to reside with state and local authorities who are best suited to respond to local needs.

### **Tools to Ensure Public Safety**

Protecting public safety on the roadways is one of the fundamental roles of state and local government. While the AV 3.0 proposes a national framework for the testing and deployment of this technology on public roadways, the agency has not been able to match the rapid pace of autonomous vehicle innovation with corresponding vehicle safety standards or other binding national safety requirements. Many of our members have expressed concerns that these new technologies may not be subject to appropriate safety rules or standards as they are developed and then tested or deployed on public roadways with other road users. We therefore urge the department to ensure both the required submission of a highly detailed safety evaluation report and its subsequent and timely release to the public. Additionally, it is critical that the federal government work to establish protocols that allow data to be shared with states and municipalities and with the public, when appropriate. Transparency in performance is essential for establishing public confidence in this new technology and for fostering a culture of safety.

### **Transparency on Motor Vehicle Exemptions**

Continuous and frequent engagement between the federal government and states through sharing of information is indispensable in order for both levels of government to best understand the status of a Highly Automated Vehicle. For example, if NHTSA were to grant an exemption from a federal motor vehicle safety standard, an immediate notification would be necessary given the potential variety and frequency of changing vehicle capabilities in a diverse fleet, with which state and local officials—including emergency responders and law enforcement—may have to interact. USDOT should either commit to posting public notification of such exemptions or collaborate with the states to establish a mechanism for immediate, direct notification of necessary state and local authorities.

### **Authority to Regulate Interstate Versus Intrastate Matters**

Our groups agree that the federal government is primarily responsible for the regulation of interstate transportation and commerce, as highlighted on page 8 of the ANPRM. However, we strongly support states retaining the unburdened authority to regulate intrastate commerce.

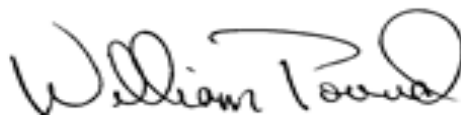
Given the magnitude of potential safety and mobility improvements, fostering the development and deployment of this exciting technology is important to all levels of government—federal, state, and local. However, the implementation of autonomous vehicle policy requires finding the appropriate balance between cooperating and delineating the respective state-local and federal responsibilities. We must approach these issues in a pragmatic, thorough and thoughtful manner to ensure that safety on our nation's roadways remains a top national priority. We look forward to continuing to work with you.

If you have further questions, please do not hesitate to contact any of the undersigned organizations.

Sincerely,



Scott D. Pattison  
Executive Director and CEO  
National Governors Association



William T. Pound  
Executive Director  
National Conference of State Legislatures




Matthew D. Chase  
Executive Director  
National Association of Counties



Tom Cochran  
CEO and Executive Director  
The United States Conference of Mayors



Clarence Anthony  
CEO and Executive Director  
National League of Cities



Bud Wright  
Executive Director  
American Association of State Highway and  
Transportation Officials



Anne Ferro  
President and CEO  
American Association of Motor  
Vehicle Administrators



Jonathan Adkins  
Executive Director  
Governors Highway Safety Association