

United States Senate

WASHINGTON, DC 20510

March 22, 2018

Mr. Dara Khosrowshahi
Chief Executive Officer
Uber Technologies, Inc.
1455 Market Street
San Francisco, CA 94103

Dear Mr. Khosrowshahi:

We write regarding a potentially critical loophole in the regulation of autonomous vehicles. The use of forced arbitration clauses by manufacturers would deprive consumers of their fundamental legal rights if injury occurs, and would reduce the incentives of some manufacturers to keep vehicles safe. As you may know, autonomous vehicle legislation currently under consideration—S. 1885, the American Vision for Safer Transportation through Advancement of Revolutionary Technologies (AV START) Act—does not explicitly prohibit forced arbitration clauses in contracts between autonomous vehicle manufacturers and consumers, a potentially glaring omission. Accordingly, we are seeking input from your company to better understand the implications of this deficiency, and how it could negatively affect consumers.

Forced arbitration provisions disadvantage consumers in almost every sector of the economy. They deny consumers their right to bring their cases to court or band together with other similarly affected consumers. Forced arbitration is especially damaging when there is considerable risk of injury or death.

While autonomous vehicles could, potentially, one day save thousands of lives when the technology fully matures, there may well be missteps along the way that will cause physical injury and death. The innovation driving this technology is exciting, but accountability is critical to ensuring that innovation continues to promote safety first. When injury or death does occur, a forced arbitration clause would prevent consumers from exercising their fundamental legal rights as Americans. For example, if an autonomous vehicle is defective or it is hacked into due to insufficient cybersecurity safeguards, a consumer's day in court would be barred if such a forced arbitration clause was in the contract.

Autonomous vehicles are widely expected to be initially deployed through ridesharing systems. Since many ridesharing companies are poised to be AV manufacturers and many traditional automakers are planning to launch ridesharing apps, this creates a direct contractual relationship between the consumer and the autonomous vehicle manufacturer that didn't heretofore exist. Furthermore, this creates a significant risk to the public because the contract

between the rideshare operator and the consumer is usually presented as a click-through agreement when downloading a rideshare app. As it currently stands, these agreements could and often do include a forced arbitration clause. It is commonly known that consumers do not read these lengthy, fine print agreements and consumers have no meaningful opportunity to negotiate or change the terms. Most consumers have no idea that they have signed away their rights—and no way to prevent it, short of forgoing use of the product—in this case autonomous vehicles—entirely.

Uber is one ridesharing company that already includes forced arbitration in their standard terms of service with users. On Monday, it was reported that an Uber vehicle operating in self-driving mode fatally struck a pedestrian in Tempe, Arizona. Had the victim been a passenger who had agreed to Uber's Terms of Service, the victim's family could have been denied recourse through the courts. It's also been speculated that had the victim been an Uber user who had agreed to the app's terms of service, Uber could very well have argued that the victim still be bound by forced arbitration.

In addition, autonomous vehicles may also be sold directly to consumers, following Tesla's business model. As a result, consumers will be much more likely to enter into contractual relationships with manufacturers in which they could be subject to forced arbitration.

The risks of a forced-arbitration loophole have garnered significant attention in the past month. As you may know, a March 2, 2018 letter signed by national auto safety and consumer rights organizations called for consumers to be protected from forced arbitration clauses. A CNN article published on March 14, 2018 has also drawn attention to this loophole, noting that, because arbitration proceedings are private, the public is more likely to be uninformed of problems with self-driving vehicles. As CNN reported, "Experts say arbitration shifts the balance of power in the favor of big businesses, because they generally hire the arbitrator and will be its repeat customer. Arbitration proceedings are also private, so use of them would mean the public is more likely to be kept in the dark about flaws in self-driving vehicles."

In light of these concerns, we seek a better understanding of what policies autonomous vehicle manufacturers have, or intend to have, with respect to forced arbitration clauses in their contracts with consumers. So that we as lawmakers have the information necessary to ensure that that Americans are not deprived of their rights when injury or death occurs, we respectfully request you respond to the following questions:

1. Do you currently use forced arbitration provisions in any of your contracts or terms of service with consumers? If yes, please share the language and URL (if possible).
2. Do you intend to include forced arbitration provisions in contracts or terms of service with consumers in the future related to autonomous vehicles?
3. Will you commit to not including forced arbitration provisions in contracts in the future?

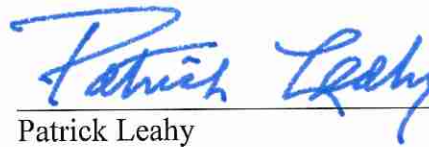
4. In light of the recent incident in Tempe, Arizona where a pedestrian was struck and killed by an autonomous vehicle, will you commit to not enforcing forced arbitration agreements against pedestrians or bystanders?
5. Further, will you commit to not enforcing arbitration agreements against consumers who are physically harmed or killed by an autonomous vehicle?

As we share your interest in the AV START Act, we request a timely response no later than April 5, 2018. Thank you for your attention to this critical safety and consumer rights issue.

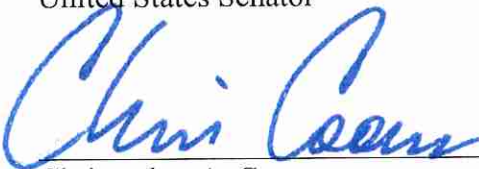
Sincerely,



Richard Blumenthal
United States Senator



Patrick Leahy
United States Senator



Christopher A. Coons
United States Senator



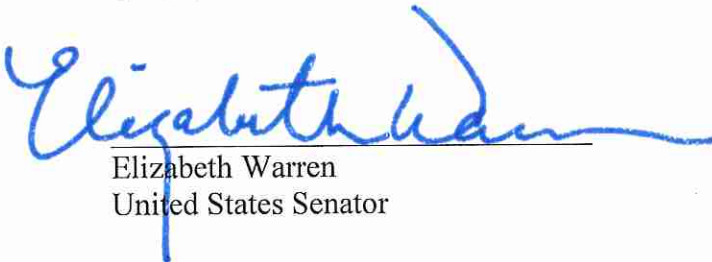
Edward J. Markey
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Kirsten Gillibrand
United States Senator



Richard J. Durbin
United States Senator



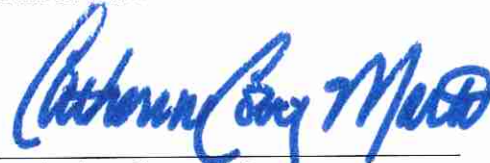
Elizabeth Warren
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Sheldon Whitehouse
United States Senator



Mazie K. Hirono
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Catherine Cortez Masto
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