

**RIGHT TO REPAIR: LEGISLATIVE AND BUDGETARY
SOLUTIONS TO UNFAIR RESTRICTIONS ON REPAIR**

HEARING
BEFORE THE
COMMITTEE ON RULES
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTEENTH CONGRESS
SECOND SESSION

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WEDNESDAY, SEPTEMBER 21, 2022
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RIGHT TO REPAIR: LEGISLATIVE AND BUDGETARY SOLUTIONS TO UNFAIR RESTRICTIONS ON REPAIR

WEDNESDAY, SEPTEMBER 21, 2022

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LEGISLATIVE AND BUDGET PROCESS,
COMMITTEE ON RULES,
Washington, DC.

The subcommittee met, pursuant to call, at 10:00 a.m., in Room H-313, The Capitol, Hon. Joe Morelle [chairman of the subcommittee] presiding.

Present: Representatives Morelle, McGovern, and Burgess.

Mr. MORELLE. The Subcommittee on Legislative and Budget Process of the Committee on Rules will come to order.

I want to welcome our witnesses and thank them for being here today. And I would also like to thank my colleagues on the Rules Committee for joining us as well, Dr. Burgess, ranking member; of course, the chairman of the Rules Committee, my dear friend, Chairman McGovern from Massachusetts.

Today's hearing will focus on a simple concept: the consumer's right to repair. The fundamental idea that if you own something, you own all of it, including the right to repair it. It is a right many people watching at home might think they currently enjoy. Sadly, they are sorely mistaken.

Manufacturers often used to make repair parts, tools, and information available for consumers and independent repair shops to fix their own appliances—TVs, cameras, other products. However, today's increased reliance on software for these types of products has made it easier for companies to restrict access to the tools and other basic repair materials needed for third parties to fix digital equipment.

In fact, there is a clear incentive to do so. Repairs of digital equipment are now often intentionally limited by the manufacturer, with companies requiring consumers to pay for repair services through either their own repair division or a manufacturer-authorized vendor. These practices by manufacturers essentially create a monopoly on repair services, with fewer options for consumers, leading to significantly higher repair prices than the free market would otherwise provide.

Importantly, another result of this dynamic is that consumers are driven to purchase new digital equipment more frequently instead of repairing old equipment, resulting in a significant increase

in electronic waste, which has now become the fastest growing waste stream in the world.

This problem first came to my attention many years ago when I had the privilege of serving in the New York State Assembly. Earlier this year, I was pleased to see that legislation I had originally authored passed both houses in the New York State Legislature, placing New York on the precipice of being the first State in the country to enact robust protections for consumers against unfair repair restrictions.

I hope to see the legislation signed into law in the near future, but the issue is really best addressed, in my view, at the Federal level to avoid a patchwork of different rules and regulations for each of the 50 States.

So I look forward to hearing from today's witnesses about the broad impact that repair restrictions have on a variety of different aspects of American life, including family budgets, the vibrancy of small business and entrepreneurs across the country, farmers and the agricultural community, and better sustainability practices to protect our environment.

Today's hearing will explore actions that Congress can take to allow individuals the right to choose how they repair their own digital equipment, ensuring that companies who unfairly restrict the right to repair are held accountable. Those potential actions include ensuring that the Federal Trade Commission has both the necessary authority and resources to protect consumers from such anticompetitive behavior.

In May of 2021, the FTC released a landmark report that had been required by Congress, and it detailed the extent to which these restrictions hurt consumers and potential considerations for Congress to consider. The report states that although the FTC does have some authority to protect consumers from product warranties that restrict repair options, they said, quote, "Technological developments have introduced new challenges that warrant a reconsideration," end quote, of whether that existing authority is sufficient.

The report also pushed back on industry claims that current repair restrictions are justified in the interest of maintaining device integrity and preventing reputational harm, determining that there was scant evidence to support these claims.

The administration has recognized the importance of the right to repair as well, including President Biden's executive order on promoting competition in the American economy issued last year. The order asked the FTC to exercise its existing authority to protect consumers from anticompetitive repair restrictions.

Since then, the FTC has brought actions against several companies, claiming those companies imposed illegal conditions on their products' warranties by including terms that declared the warranty void if a consumer used a third party to repair their products. So I applaud the FTC for their increased focus on the issue and encourage them to continue using the tools that are available to them to protect the right to repair.

Although there have been a few different legislative proposals introduced this Congress, including both the implications of repair restrictions on copyright law and the auto sector, the goal of this hearing will be to focus on determining whether the FTC has ade-

quate resources and enforcement authority to protect consumers from repair restrictions on consumer products and agricultural equipment.

Last summer, I was proud to introduce the Fair Repair Act, which is broadly focused on enhancing FTC authority. The bill would require OEMs to make diagnostic and repair information, parts, and tools available to third-party repairers and owners on fair and reasonable terms, helping consumers and repair shops avoid unnecessary and costly delays while also reducing waste.

I recognize the importance of protecting trade secrets and other intellectual property rights, and the bill allows the FTC to better guard against anticompetitive conduct without damaging existing protections of such proprietary information.

So I look forward to the discussion today, which I hope will produce a constructive dialogue on how we can work together to make technology repairs more accessible and affordable for items from cell phones to laptops to farm equipment, giving individuals the ability to choose how they want to repair their own property, which, again, I repeat, was something that consumers for decades and decades and decades have held as a right.

So, with that, the chair now recognizes a good friend, the ranking member, Dr. Burgess, for any opening comments he wishes to make.

Dr. BURGESS. Well, and I thank the chair.

I am a little bit mystified as to why we are here in the Rules Committee doing a hearing on something that logically would belong in one of the committees of jurisdiction, one of the authorizing committees, Small Business, Financial Services, Energy and Commerce, that has the jurisdiction over the Federal Trade Commission.

But I am grateful to our witnesses for being here with us today. Thank you for allowing us to hear your insights and your expertise and to work with the committee while we work through this issue.

I will tell the chairman, I have constituents who are firmly on both sides of this issue, so I recognize the importance. I am just a little perplexed as to why it is in the Rules Committee as sort of original Rules jurisdiction.

Constructive to acknowledge from the outset the contents and the nuance that surrounds the right of repair issue. As Chairman Morelle knows well, the debate concerning the right to repair legislation can trace its origins back to disagreements between car manufacturers and independent automobile mechanics.

The issue has grown much more complex since that initial debate. Items such as iPhones and personal laptops have become ubiquitous. Now that these products are owned by large segments of the American population, the need for access to parts to keep these devices in working order has indeed become critical.

Chairman Morelle, you and I are both aware of the debate surrounding the right to repair that has been around for easily over a decade's time. In 2013, Massachusetts became the first State to sign the right of repair legislation into law. Subsequently, Massachusetts has set into motion a flurry of legislative activity. Currently, 19 States are actively considering right to repair legislation.

Proponents for stronger consumer protections argue that, once an individual has purchased a product, it is well within their rights to seek out the cheapest and most efficient form of repair. However, when the products consumers have purchased need repair, consumers are unable to find independent—and consumers are unable to find independent repair businesses who will facilitate these repair, it becomes difficult. Right to repair advocates argue that manufacturers have made it difficult to purchase parts required to repair the products that they have bought.

Incidentally, I have just very recently heard from some automobile dealers that that is—they take issue with that. They believe it is not the case. They believe they make those parts available on a timely basis; it is more supply chain issues that are causing the problems now than it is the dealers themselves.

Conversely, manufacturers argue, and not without merit, that if they are compelled to provide parts and sensitive technical information regarding their products, that their intellectual property will be jeopardized and the competitors will be able to reverse-engineer those products.

It is my hope that in our discussion today, we will not only explore the arguments and merits of this type of legislation, but also arguments that present compelling evidence that certain pillars of our dynamic digital economy could be adversely affected by this legislation that skews too far in either direction.

I believe this legislation is a beneficial starting point for discussions as to how to harmonize the needs of individual consumers and safeguarding American companies' intellectual property.

Mr. Chairman, in closing, I find it interesting that the right to repair debate does not divide itself deeply along partisan lines. The right to repair often forges consensus between Republicans and Democrats who may not be able to agree on much else. I hope our discussion today concerning this piece of legislation will demonstrate the perspective to various stakeholders who could be affected by this issue.

And, Mr. Chairman, before I yield back, let me just ask unanimous consent to insert into the record a letter from Carl Gierisch, Jr., who is the current mayor of Roanoke, Texas, and the owner of Roanoke Auto Supply, who sends a letter to me in favor of right to repair legislation. And I also have a statement for the record from Mr. Drew Campbell, who aligns himself more with automobile manufacturers and dealers.

So I would ask that both of these letters be made part of the record.

Mr. MORELLE. Without objection.

[The information follows:]

Dr. BURGESS. And I will yield back.

Mr. MORELLE. Thank you. Thank you to the ranking member for his very thoughtful and I think really well-reasoned opening that sort of does talk about the balance between all these issues and how it is our responsibility to try to strike the right balance when it comes to public policy. So I thank him very much for his opening comments.

Now, I would like to introduce our witnesses, if I may.

First, we have Nathan Proctor, who is senior director of the campaign for the right to repair at U.S. Public Interest Research Group, where he works to pass legislation that will prevent companies from blocking consumers' ability to fix their own electronics. Mr. Proctor has been with PIRG since 2005.

We are also joined by Lauren Williams, who is the associate director of national affairs at the New York Farm Bureau, which is the largest general farm and agricultural organization in New York State. Ms. Williams is responsible for directing and coordinating the Bureau's Federal advocacy efforts, including working with the New York Congressional Delegation and Federal agencies on a wide range of farm and agricultural legislative and regulatory issues.

And then, finally, remotely, we are joined by Mr. Sandeep Vaheesan, who is the legal director of the Open Markets Institute, where he leads the organization's legal advocacy and research work. Mr. Vaheesan works on a range of antimonopoly topics, including antitrust law's role in promoting fair competition. 2015 to 2018, he served as a regulations counsel at the Consumer Financial Protection Bureau and, before that, worked at the American Anti-trust Institute.

So to the witnesses, thank you again for joining us.

Mr. Proctor, you are recognized for your testimony, sir.

STATEMENTS OF MR. NATHAN PROCTOR, SENIOR CAMPAIGN DIRECTOR, RIGHT TO REPAIR, U.S. PIRG (PUBLIC INTEREST RESEARCH GROUP); MS. LAUREN WILLIAMS, SR. ASSOCIATE DIRECTOR OF NATIONAL AFFAIRS, NEW YORK FARM BUREAU; AND MR. SANDEEP VAHEESAN, LEGAL DIRECTOR, OPEN MARKETS INSTITUTE

STATEMENT OF NATHAN PROCTOR

Mr. PROCTOR. Thank you very much, Chair Morelle, Ranking Member Burgess, Chair McGovern. My name, as was just said, is Nathan Proctor. The PIRG network is mostly State-level advocacy groups that work all over the country, and we have been behind right to repair efforts in dozens of States. We have also issued some 13 reports on right to repair and related topics, so I could definitely talk your ear off about this, as Owen probably and your other staff perhaps can attest. But I think what we are talking about is pretty simple. It boils down to a pretty simple idea, which is manufacturers have a clear incentive to control the repair process, and they do so.

When the only one who can fix something is a manufacturer or their authorized representative, they control the cost of that repair or they can choose to push an upgrade and to force you to buy a new product. A look at how the repair process actually works, I think, will elucidate how this is accomplished. And then, finally, I will talk a little bit about why this matters.

So the first part of repair process is figuring out what is wrong. In most of our modern devices, there is a lot of embedded information that the product actually knows why it is failing, right. Your phone probably knows why it is shutting off periodically. But it doesn't tell that information to you, the product owner. You actu-

ally have to plug in a proprietary, you know, dealership-controlled diagnostic tool to get the phone to report what it is experiencing. And sometimes you get some version of the diagnostic information, but it is like a light version that is incomplete, and so you can't fix the problem without more information.

Once you diagnose the problem, then you need to go and buy some spare parts. And I will—you know, to Mr. Burgess' point that some—for many industries, parts are not the core of the issue. But for a lot of other industries, especially around consumer products, it is very much the core of the issue.

If your control board in your Sony television was to break, where would you get that part if Sony didn't want to sell it to you? Where could you possibly buy a control board for that particular TV, right? They control the parts, and they can charge whatever they want for that part. They usually can price it to push you to buy a new product.

And, finally, and the most perniciously, sometimes after you fix the product, you need to authenticate or calibrate so that it becomes fully operational. Like when you install a printer, you have to put up printer drivers so that the computer and the printer can communicate.

Imagine if you had to pay Epson to fly a dealer to your house to install your printer driver. This is essentially what farmers are experiencing, where there is a dealer software tool without which it is impossible to complete the repair, and it is not just the software.

Sometimes it is just the calibration settings. Like a farmer from Oklahoma told us, he replaced the hydraulic injectors on his equipment. He was unable to get the calibration settings for those injectors. The dealer would not tell him what those settings would be, and it is just basic technical information needed for repair.

So repair restrictions are ubiquitous, as we have discussed, and it has a big impact. And I will talk about a couple of different areas.

First is the cost, right? Our research has shown that consumers could save about \$330 a year if they were to repair instead of replace products. That is \$40 billion across the U.S. economy. That is a lot of money when costs are high and budgets are tight.

The second is that it increases the digital divide. It removes used products that could be low entry points to get a working computer with access to the internet. The FTC noted in their Nixing the Fix report that the higher cost of repairs, quote, fall disproportionately, burden Americans in financial distress and communities of color and lower-income communities.

So the third thing is that it hurts small businesses. I can't tell you how often small, independent repair shops will tell me, Apple could flip a switch, push an update at any moment and make screen repair impossible because of the software in the phone.

Can you imagine having to hire staff and sign a lease knowing that the most high-volume part of your business could be shut off at any moment? We need to protect these businesses so that they can thrive and grow.

And, finally, electronic waste is the fastest growing part of our waste stream. Disposable electronics are incompatible with a liv-

able planet. A single cell phone takes about 122 pounds of carbon to make, and if we used our cell phones for 1 year longer on average as Americans, it would have the same climate benefits of taking 636,000 cars off the road.

So I believe there is a better way we can empower repair, remove these barriers. People can fix stuff, save money, protect the environment. And I don't think this issue will go away until Americans have that right.

So thank you very much.

[The statement of Mr. Proctor follows:]



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RE: Right to Repair: Legislative and Budgetary Solutions to Unfair Restrictions on Repair.

Testimony for the record

Nathan Proctor

U.S. PIRG Senior Right to Repair Campaign Director

Sept. 18, 2022

Thank you Chair Morelle, Ranking member Burgess and members of the subcommittee for this opportunity to discuss an important topic.

My name is Nathan Proctor, and I run the Right to Repair campaigns for the Public Interest Research Group -- or PIRG -- network. Our state affiliates around the country have been working for years to support state-level, pro-repair reforms across dozens of states. We have issued more than a dozen reports since 2018 about Right to Repair topics, including wheelchair repair, tractor repair, the economic and environmental impacts of repair and more.

We have compiled a significant amount of information concerning this topic, and while I hope to provide a brief summary in these pages, there is more than I can report. However, I believe that we can sum up all of our work in a really simple premise: Manufacturers have a clear incentive to control the repair of their products, and they do so -- further, in controlling repair, they harm the public.

When something breaks, you fix it. That's just common sense. But when only the manufacturer or their "authorized technician" has the necessary parts, tools or information needed, they can charge whatever they want or push you into buying a new device. These manufacturer-imposed repair restrictions affect a wide variety of products from toasters to tablets, and even tractors. The result is surging repair costs and a massive amount of waste. For example, Americans dispose of some [416,000 cell phones every day](#). Meanwhile, farmers across the country report losing time in the field waiting on "authorized" dealer service.

In my overview, I'd like to discuss the repair process and how it is restricted, and the impact that has on the public.

Repair process part 1: Diagnosis

The repair process begins with diagnosing the problem. In order to figure out what is going wrong, you might need to access the error code, and the description of what that code means. You might need to access an error log generated by the device. In other words, in some cases you need a service manual that reviews how to access error codes and how to interpret them, or you need digital diagnostics tools. Manufacturers restrict access to both the service documentation and diagnostic software.

For example, your iPhone might know exactly why it is shutting off periodically, or at least have very useful information about the issue. You, as the product owner, have no way of retrieving that information. Only when the device is connected to a “trusted” service computer, which is highly restricted by the manufacturer, will your phone share that diagnostic information.

Diagnostic software tools are important to independent repair shops. In early 2020, U.S. PIRG Education Fund and iFixit surveyed 302 independent phone technicians, and 89% of independent repair technicians said their businesses would be more successful if they had access to repair software from Apple and Samsung.

In other cases, manufacturers refuse to provide the service manual -- or provide a restricted version which doesn't tell you what you need to know. Willie Cade, a regional director for Repair.org and a member of the Nebraska Farm Bureau, acquired the Diagnosis and Tests Service Manual covering five popular John Deere machines. Of the roughly 700 error codes the manual lists, 89% state that the farmer should contact their John Deere Dealer with very little other information to help the farmer address the issue.

That's not a service manual, that's a sales brochure.

Repair process part 2: Replace what's broken

Once you know what the problem is, you need to repair or swap the broken part. Some manufacturers will sell you parts, many will not.

For some devices, you can find aftermarket parts (parts made by other suppliers). In many cases, it is impossible because of the software embedded on those parts. Most modern televisions stop working because the circuitry fails, but if television makers like Sony won't sell you spare parts, where would you get that circuit board? Not only does a lack of options for parts cause fixable products to be sent to the scrap heap, fewer options also means higher costs for spare parts, which can be as much as replacing the whole device.

Another common practice is to replace a large portion of the device instead of just the components that are malfunctioning. For example, as [documented by the Wall Street Journal](#), Apple-Authorized repair shops will replace the entire motherboard for most errors which include a fault on some portion of that laptop motherboard. Meanwhile, an independent shop

might be able to replace just the small part which is broken, saving hundreds of dollars in parts costs, cutting the repair cost from around \$1,000 to around \$300.

Repair process part 3: Restoring the device to working order

After the part is installed, there is often additional calibration, software pairing or other authentication needed for the part to be recognized and function properly.

This is a process we are all fairly accustomed to. For example, when you buy a printer, you need to install the driver so the printer and computer communicate properly. This is a very similar process to installing many kinds of parts, which require embedded instructions to communicate with other parts of the device. Many manufacturers refuse to allow access to these necessary files, known as firmware. Imagine if the manufacturer of your printer required you to pay for a dealer representative to come out and install the printer driver.

Many farm equipment repairs which included changes in the electronics are *impossible* without access to software tools. The equipment is designed to require a dealership computer to connect to it in order to return to working order.

It's not just about software -- sometimes you need calibration information, the kind you would expect to find in the product's service manual. We recently heard from a farmer in Oklahoma who fixed his hydraulic injectors, but his dealer refused to tell him the configuration settings for those injectors. This isn't secretive intellectual property. It's basic technical information needed for repair.

Why repair restrictions matter

Repair restrictions like these are ubiquitous across every industry. So what impact does this have, and why does it matter?

It costs consumers a ton of money. Our research finds that repair can save the average household about \$330 per year, which totals \$40 billion across the country. This number is so staggering in part because we are spending so much on new electronics, some \$1,400 per household per year.

Repair restrictions hurt American farmers. Additionally, we have worked with allies in the farming community to catalog impacts on farm equipment repair, and investigate the ways in which repair is restricted. A survey released in February from U.S. PIRG Education Fund and National Farmers Union [shows](#):

1. Farmers want to fix their own equipment. Of the 74 farmers across 14 states surveyed by U.S. PIRG Education Fund and National Farmers Union, 95% support Right to Repair.
2. Reliance on dealer technicians leads to high repair costs. 92% of farmers surveyed believe they could save money if they had better access to independent repair or could make all repairs themselves.

3. Many farmers opt for older equipment to avoid software repair hassles. Of the farmers surveyed, 77% indicated that they had bought older-model equipment to avoid the software in newer equipment.

PIRG released two reports on farm equipment repair, "[Deere in the Headlights](#)" and "[Deere in the Headlights II](#)," which additionally found that John Deere, which controls [53% of the country's large tractor market](#), has been working to consolidate dealerships [since the mid-2000s](#). Our research shows Deere has been quite successful: 82% of Deere's 1,357 agricultural equipment dealerships are a part of a large chain with seven or more locations. This mass consolidation means that there is **one John Deere dealership chain for every 12,018 farms** and every 5.3 million acres of American farmland. This further undermines competition and drives up cost. It can also mean a dispute with your local dealer requires you to travel hundreds of miles to find another option.

Repair restrictions increase the digital divide. As the FTC wrote in their "[Nixing the Fix](#)" report to Congress last year, "[t]he higher cost of repairs disproportionately burdens Americans in financial distress" and that "the burden of repair restrictions may fall more heavily on communities of color and lower-income communities." If we could refurbish older electronics and keep them working, it would create low-cost products which can help all Americans get the technology they need to connect.

These restrictions hurt small businesses. Repair shops often tell me that the knowledge that Apple could push a software update at any moment that would make screen repair impossible outside of Apple stores -- and because iPhones are by far the most popular phones, and screen repair is the most common repair, that would put them out of business. It's hard to plan for the future if that kind of threat is hanging over your head like the sword of Damocles. Those shops need legal protection to grow and thrive.

Finally, disposable electronics are incompatible with a livable planet. A phone takes about 122 pounds of carbon to make, mostly from mining and smelting the components. Americans replace some 140-150 million phones a year. If we used our phones for one year longer on average, it has the same climate benefits as taking 636,000 cars off the road. According to the [U.S. EPA](#), electronic waste is the fastest growing part of our waste stream.

There is a better way. We can empower repair, cut costs, cut waste, support local businesses and more. It's common-sense and it's not going away as an issue until Americans can fix their stuff again.

Thank you.

Mr. MORELLE. Perfect. Thank you, Mr. Proctor.
Ms. Williams.

STATEMENT OF LAUREN WILLIAMS

Ms. WILLIAMS. Thank you to the Committee on Rules and the subcommittee Chairman Morelle, Ranking Member Burgess, and other members of the committee for having me here today.

As was stated, my name is Lauren Williams, and I get the pleasure of working on behalf of 15,000 farmers across New York State on a whole host of issues. And we are affiliated with the American Farm Bureau Federation, which represents farmers all across the country.

And, you know, New York and this country is home to a lot of diversity of agricultural production, you know, and one of the key components of making sure that food gets to consumers' tables is the farm equipment and the technologies that are able to plant, harvest, and produce, you know, quality goods and foods to consumers.

And it is really critical that the, you know, pieces of equipment ensure that farmers can operate smoothly and efficiently. However, the timely repair and maintenance of equipment is really critical to ensuring that farmers don't have to face unnecessary breakdowns. And it is really key that farmers have the option to repair their own equipment, get it fixed at a dealership of their choice, or go to an independent repair shop.

And, you know, equipment is a major financial investment for farmers. And, you know, if they don't have the freedom to choose who they can go to, that makes an impact to their budget. And when we talk about equipment, just want to frame it in the form of, you know, it is a tractor, a planter, harvester, robotic milking system, or, you know, other produce-handling type of, you know, infrastructure.

And, you know, as Congress considers to address right to repair, you know, we think it is really critical to understand that, you know, it does have a really big impact on farmers. Based on feedback that we have received from farmers, you know, sometimes a dealership that may be the only authorized facility to repair equipment can be, you know, far away, whether it is, you know, over an hour, or they just don't have the technicians during the busy time of the year to send that out.

And this has only been exacerbated by the supply chain delays that we have seen, the availability of labor, and the consolidation of equipment dealerships. That continues to be a big thing we hear from our farmers.

You know, farmers have also hired their own repair technicians, because as they get larger in operation, it just makes sense to have somebody on their farm to, you know, handle that repair. So—and that repair staff shouldn't be blocked from doing repairs. You know, it is more economically viable to go down that route.

And so, you know, farmers are more dependent on technology, you know, as we continue to see advancements, you know, through the uses of computers or GPSs in farm equipment. It is really critical that farmers have access to documentation, parts, digital com-

ponents, onboard diagnostic and software tools needed to make repairs on equipment that they have purchased.

And as part of, you know, our farm bureau organization, we get direct feedback that sets our policy as an organization, and based on what the feedback we have received is, you know, farmers really want the ability to make arrangements to fairly purchase repair and diagnostic information and repair tools from, you know, manufacturers. And so this allows the OEMs, or original equipment manufacturers, to still capture the value of their product, but also so they can—farmers can get their product repaired in a timely manner.

And so the other key component is making sure that any of that information is available to all ages, models, and years of equipment in use. And so we have also expressed the desire of, you know, maybe we can do MOUs with repair with dealerships. But, you know, sometimes the legislative can help—efforts can help nudge that along, which is really important.

And, you know, we have seen some OEMs make commitments to releasing their information, but I think we still have a long ways to go to make sure that that goes into place. And I would say, you know, what I think sometimes, you know, dealerships like to say, well, they are going to do—make changes to emissions or safety things, and that is not what we are advocating for. So I want to make sure that is clear there, that we want, you know, good things that enables farmers to keep rolling, you know, and not have to face shutdowns due to repair or, you know, slowdowns.

So thank you again for this opportunity, and, you know, right to repair is critical for our farmers.

[The statement of Ms. Williams follows:]



**Statement of the
New York Farm Bureau**

**To the House Committee on Rules
Subcommittee on Legislative and Budget Process**

***"Right to Repair: Legislative and Budgetary Solutions to Unfair
Restrictions on Repair"***

**Presented by Lauren Williams
Associate Director of National Affairs, New York Farm Bureau**

Wednesday, September 21, 2022

Thank you to the Committee on Rules and to Subcommittee Chairman Joseph Morelle for inviting me to testify before you today on the right to repair. My name is Lauren Williams, and I am the Associate Director of National Affairs for New York Farm Bureau. New York Farm Bureau is the largest general farm organization in the state with over 15,000 members representing all farm commodities and all production methods across all parts of the state. We are a state affiliate of the American Farm Bureau Federation, which represents farmers all across the country. New York State is home to a wide diversity of agriculture production which utilizes critical farm equipment and technologies to plant, harvest, and move food and goods to consumers.

These critical pieces of equipment ensure that farms can operate smoothly and efficiently, however the timely repair and maintenance of this equipment is critical to ensure the farms do not face unnecessary downtimes due to breakdowns. A key component of this is the ability for farmers to get their equipment fixed and repaired in a timely manner, be it through on-farm repair, working with an equipment dealer, or an independent repair business. Equipment is a major financial investment for farmers, and they must have the freedom to choose where equipment is repaired. This equipment includes tractors, planters and harvesters, robotic milking systems, and produce handling facilities, just to name a few.

As Congress considers potential solutions to address right to repair, we believe it is critical to understand why the issue is so important to farmers across New York as well as across the country. When equipment breaks, farmers need to fix it as soon as possible and as a result, farmers rely on having access to critical repair measures through multiple avenues. Based on feedback that we've received from farmers, we have heard that a dealership may be a long distance away and to get a technician to repair the equipment can take hours, days, or weeks. This has only been exasperated by supply chain delays and availability of labor. In addition, farmers may already have the capabilities themselves to repair the equipment or can rely on independent repair shops to assist with repairs. This can also be more economically viable for farmers.

Addressing right to repair for farmers will ensure that when something breaks down on the farm, owners can repair their own equipment or go to an independent repair business without violating fine print agreements that restrict consumers from repairing their product, unless they are working directly with the manufacturer. When a consumer purchases a product, they should have the right to repair their equipment without having to ask for permission from the manufacturer. Farmers are more dependent on technology in equipment than ever before, and farmers should have access to documentation, parts, digital components, on-board diagnostic, and software tools needed to make repairs on equipment they've purchased.

As part of Farm Bureau's policy development process, our farmer members have developed specific priorities for inclusion in any right to repair solution, and we offer the following considerations for Congress:

Equipment owners, including farmers, and independent repair providers should be able to make arrangements to fairly purchase repair and diagnostic information as well as necessary repair tools and parts from manufacturers. This allows original equipment manufacturers (OEMs) to capture the value of their product while also ensuring equipment owners can have their equipment repaired in a timely manner. Our farmers have expressed the desire for any legislation or agreements to include all OEM equipment, regardless of age, model or years in use.

Another option would be to create a pathway for farmers and original equipment manufacturers to have negotiated agreements like a memorandum of understand (MOU) to have access to repair information without the need to go through a dealership. This could include creating a fair pricing structure for farmers and independent repair technicians, the ability to reset the operating system, and access to diagnostic and repair information in a timely manner. Some OEMs have committed to making more information available to farmers, and Farm Bureau is hopeful that this will continue to be part of the solution to addressing right to repair issues in addition to legislative avenues.

We are not advocating for any type of illegal modifications to safety features on equipment, modifications to emissions controls and machine integrity. It is also important that any solution stipulate that these modifications could affect the terms and conditions of the owner's warranty.

As states are beginning to pass their own right to repair legislation, it is critical for a commonsense federal approach that offers farmers and other consumers who are purchasing products the ability to repair their equipment and other goods.

Thank you again for the opportunity to share the farmer perspective on right to repair and the need to address the issue to ensure farmers can repair their equipment. I would be glad to take any questions you may have.

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Mr. MORELLE. Thank you very much.
And now we have, remotely, Mr. Vaheesan. Welcome, and the floor is yours.

STATEMENT OF SANDEEP VAHEESAN

Mr. VAHEESAN. Thank you, Chairman Morelle, Ranking Member Burgess, the other members of the subcommittee, for the opportunity to participate in today's hearing.

My name is Sandeep Vaheesan. I am the legal director at the Open Markets Institute, an antimonopoly research and advocacy organization.

Manufacturers of goods, ranging from automobiles to tractors to ventilators, have tried to monopolize markets for repair, commonly known as aftermarket. The motivations are not hard to divine. The public spends tens of billions of dollars on repairs and maintenance every year. The profits and profit margins on parts and service are substantial and sometimes even higher than on the sale of original equipment.

Original equipment manufacturers, or OEMs, such as Apple, Ford, and John Deere, employ a variety of unfair competitive tactics to lock up parts and service markets and lock in their customers. They restrict the availability of parts and tools, including manuals for independent technicians, and prevent competitive manufacturing of these items through the assertion of patents and trademarks. OEMs design products and—

Mr. MORELLE. I am sorry to—if I could interrupt for one second.

I don't know if there is a way to increase the volume, but it is difficult to hear your comments. I don't know if you can do it on your end. I am not sure what we can do technologically here, but it was—it is difficult to hear. I am following along in your written testimony, but if there is a way to—

Mr. VAHEESAN. Oh, okay. Sure. Let me try to hold the microphone closer.

Mr. MCGOVERN. That is better.

Mr. MORELLE. That is better. Much better. Thank you.

Mr. VAHEESAN. Okay, great.

Sorry. Let me—OEMs design products that thwart independent repairs too, using everything from unusual screws to software to prevent and deter customers from servicing their products where they want. For example, on one occasion, when users updated to the latest iOS, Apple disabled iPhones that had installed third-party parts.

Two other methods of restricting the right to repair are worth noting. Manufacturers condition warranty coverage on the use of branded parts and service, which generally violates the Magnuson-Moss Warranty Act that Congress passed in 1975. U.S. PIRG found that, out of 50 surveyed home appliance manufacturers, 45, or 90 percent, indicated they voided warranties in the event of unauthorized repairs.

OEMs also disparage the safety and quality of independent parts and service, despite typically having no basis for doing so. Indeed, in a 2021 report, the Federal Trade Commission found that OEMs provide little or no substantiating evidence for these claims against independent rivals.

So what are the consequences of aftermarket monopolization? First, it subverts common notions of ownership. OEMs prevent car owners from making routine repairs in their garages, computer aficionados from upgrading their machines at home, and millions of others from patronizing independent service centers.

Owners of appliances, electronic devices, farm equipment, and vehicles are made captive to manufacturers and their network of service providers and have no option but to pay their inflated prices. The economic effects are especially severe for lower-income households who may have little financial cushion to pay, for instance, overcharges on car repairs, while also covering their rent and meeting other financial obligations.

In some cases, the dearth of independent repair options can force people to delay essential service. In rural and other less densely populated places of the country, many OEMs do not have a service presence. This can compel farmers to wait extended times to repair tractors, combines, and other equipment, which is something they cannot afford during harvest season and other critical points in the agricultural calendar.

In healthcare, delayed repairs on life-supporting equipment can have dire consequences. Without functioning ventilators, hospitals may be unable to treat seriously ill COVID-19 patients in their community.

Due to higher prices for parts and service, many consumers may opt not to repair damaged or wornout products at all. The ubiquity of broken smartphone screens is an illustration. More than 60 percent of Americans with broken phone screens do not get them fixed.

Monopolization of aftermarkets also closes off an important entrepreneurial path for many Americans. Manufacturers deny aspiring businesspeople the freedom to establish their own service centers for repair of cars or to set up a kiosk at the mall to fix smartphones. These business opportunities may be especially valuable for people of color, who frequently face discrimination and exclusion in labor markets.

Aftermarket monopolization also has damaging effects on the environment. By substantially raising the cost of repairs, manufacturers can effectively force many customers to purchase new products instead of repairing what they have. This means reduced longevity for appliances, cars, and smartphones, and greater production of replacement items. Reduced effective longevity for these products translates to more waste into landfills and increased greenhouse gas emissions and natural resource extraction.

Electronic waste, or e-waste, is especially harmful. Millions of computers, phones, and televisions are sent to landfills in the United States, and especially countries in the global south every year. This waste can contaminate groundwater used for drinking and agricultural purposes and, when incinerated, can cause cancer and other serious illness.

Congress must restore and protect Americans' right to repair their cars, farm equipment, and smartphones, just to name a few examples.

Chairman Morelle's Fair Repair Act would be a major advance and ensure the wide availability of parts and tools on fair and reasonable terms. Through such measures, Congress can end manufac-

turers' ongoing monopolization of aftermarkets. The benefits of such legislative action include restoration of the rights traditionally associated with product ownership, lower priced and more timely repairs, more entrepreneurial opportunities, and a cleaner environment.

And without a captive customer base for parts and service and an easy source of revenues and profits, OEMs may have a stronger incentive to design, manufacture, and market high-quality appliances, electronics, equipment, and vehicles.

Thank you for the opportunity to testify at today's hearing. I look forward to your questions.

[The statement of Mr. Vaheesan follows:]

Right to Repair: Legislative and Budgetary Solutions to Unfair Restrictions on Repair
 Testimony Before the Committee on Rules' Subcommittee on Legislative and Budget Process
 United States House of Representatives

September 21, 2022

Sandeep Vaheesan
 Legal Director
 Open Markets Institute

Thank you Chairman Morelle, Ranking Member Burgess, and the other members of the Subcommittee for the opportunity to participate in this hearing. My name is Sandeep Vaheesan. I am the Legal Director at the Open Markets Institute.¹

Manufacturers of goods ranging from automobiles to tractors to ventilators have tried to monopolize markets for repair (commonly called aftermarket). Their motivations are not hard to divine. The public spends tens of billions of dollars on repairs and maintenance every year. For instance, the annual revenue from auto collision repairs alone was \$33 billion in 2018.² The profits and profit margins on parts and service are substantial, and sometimes higher than on the sale of original equipment.³ Original equipment manufacturers (OEMs) such as Apple, Ford, and John Deere employ a variety of unfair competitive tactics to lock up parts and service markets and lock in their customers.⁴

Aftermarket monopolization subverts common notions of ownership. It prevents car owners from making routine repairs in their garages, computer aficionados from upgrading their machines at home, and millions of others from patronizing independent service centers. Owners of appliances, electronic devices, farm equipment, and vehicles are made captive to manufacturers and their network of service providers and have no option but to pay their inflated prices. The economic effects are especially severe for lower-income households who may have little financial cushion to pay, for instance, overcharges for car repairs, while also covering their rent and meeting other financial obligations.

¹ The Open Markets Institute is a non-profit organization dedicated to promoting fair competitive markets. It does not accept any funding or donations from for-profit corporations. Its mission is to safeguard our political economy from concentrations of private power that threaten liberty, democracy, and prosperity. The Open Markets Institute regularly provides expertise on antitrust law and competition policy to Congress, federal agencies, courts, journalists, and members of the public.

² Claire Bushey, *Why Deere and Cat Don't Want Customers to Do It Themselves*, CRAIN'S CHI. BUS. (May 10, 2019), <https://www.chicagobusiness.com/manufacturing/why-deere-and-cat-dont-want-customers-do-it-themselves>.

³ *Id.*; *Where Does the Car Dealer Make Money?*, EDMUNDS (June 13, 2019), <https://www.edmunds.com/carbuying/where-does-the-car-dealer-make-money.html>.

⁴ See generally DANIEL A. HANLEY, CLAIRE KELLOWAY & SANDEEP VAHEESAN, OPEN MARKETS INSTITUTE, *FIXING AMERICA: BREAKING MANUFACTURERS' AFTERMARKET MONOPOLY AND RESTORING CONSUMERS' RIGHT TO REPAIR* (2020), https://static1.squarespace.com/static/5e449c8c3ef68d752f3e70dc/t/5ea8a6d93b485d0feb9b5d6b/1588111098207/R_eport_RightToRepair_HanleyKellowayVaheesan-1.pdf.

In some cases, the dearth of independent repair options can force people to delay essential service. In rural and other less densely populated parts of the country, many OEMs do not have a service presence. This can compel owners of tractors and other machinery to wait extended times for repair, which is something they cannot afford during harvest season and other critical points in the agricultural calendar. The stakes are so high that one survey found that 77% of farmers have intentionally purchased older farm equipment to avoid the risk of repair delays due to new equipment embedded with software locks.⁵ In health care, delayed repairs on ventilators and other life-supporting equipment can have dire consequences.

Monopolization of aftermarkets also chokes off an important entrepreneurial opportunity for many Americans. Servicing durable goods is a major channel for entrepreneurial activity. Through monopolization of aftermarkets, manufacturers deny aspiring businesspeople the freedom to establish their own service center to repair cars or to set up a kiosk at the mall to fix smartphones. These business opportunities may be especially valuable for people of color, who frequently face discrimination and exclusion in labor markets.

Aftermarket monopolization has deleterious effects on the environment. By substantially raising the cost of repairs, manufacturers can encourage and effectively force many customers to purchase new products, instead of repairing what they have. This means reduced longevity for appliances, cars, and smartphones and greater production of replacement items. Reduced effective longevity for products translates to more waste sent to landfills and increased greenhouse gas emissions and natural resource extraction.

Congress must restore and protect Americans' right to repair their cars, farm equipment, and smartphones, just to name a few examples. Chairman Morelle's Fair Repair Act would be a major advance and ensure the wide availability of parts, for both independent servicers and consumers.⁶ Through such measures, Congress can end manufacturers' ongoing monopolization of aftermarkets for many goods. The benefits of such legislative action are manifold: restoration of rights traditionally associated with ownership, lower priced and more timely repairs, more entrepreneurial opportunities, and a cleaner environment.

I. How Manufacturers Monopolize Aftermarkets

Equipment manufacturers use an array of unfair competitive practices to monopolize and otherwise dominate aftermarkets. While the unfair tactics are many, five practices are worth highlighting. Through these methods, manufacturers have shut out independent parts manufacturers and service providers and reserved lucrative aftermarkets for themselves and their network of authorized and controlled technicians.

OEMs have restricted the sale of parts and tools for serving their products. Instead of selling these items to all comers, manufacturers limit their sale to authorized dealers and technicians and withhold them from independent repair shops. For instance, camera-maker Nikon stopped selling

⁵ KEVIN O' REILLY, U.S. PIRG EDUCATION FUND, DEERE IN THE HEADLIGHTS II 7 (2022), <https://publicinterestnetwork.org/wp-content/uploads/2022/02/Deere-In-The-Headlights-II.pdf>.

⁶ Press Release, Congressman Joe Morelle Introduces the Fair Repair Act, Congressman Joseph Morelle (June 17, 2021), <https://morelle.house.gov/media/press-releases/congressman-joe-morelle-introduces-fair-repair-act>.

parts to independent repair shops in 2012 and subsequently its authorized service shops too.⁷ To prevent the “leakage” of parts and tools to independent firms, manufacturers also restrict the resale of parts and tools. For example, a manufacturer may coax distributors and product owners not to sell parts to independent technicians.⁸ Moreover, OEMs may assert patents and trademarks to prevent independent manufacturers from making replacement parts and tools and use exclusive contracts to prevent authorized dealers from purchasing them from “non-authorized” sources.⁹

In some cases, manufacturers have designed products to restrict independent repairs. For example, smartphone makers glue components together or use unusual screws to make opening devices very difficult without damaging them.¹⁰ Even experienced independent technicians may not have the know-how or the specialized tools to open and repair these devices. The integration of software in many goods has given manufacturers another design weapon to thwart self-repair and independent service. Independent technicians may not be able to service cars because manufacturers refuse to give them the proprietary codes needed to access the vehicle’s software and diagnose the problem.¹¹ Further, software can detect non-OEM parts and prevent appliances, devices, and vehicles from functioning if they feature these components.¹² For example, on one occasion, “when users updated to the latest operating system, Apple disabled iPhones that had installed third-party parts.”¹³

Manufacturers have also conditioned warranties on the use of their parts and service. They have voided warranties when product owners used non-authorized parts for repair. Through this practice, manufacturers strongly steer owners toward using only their authorized parts and service and not doing business with independents. In effect, manufacturers are tying warranty coverage to the use of their parts and service and restricting product owners from using independent alternatives.

Although this practice is generally against the law,¹⁴ many manufacturers condition the effectiveness of warranties on the use of branded parts and service. For example, many car owners have complained that auto dealers invalidated their warranties when they discovered they had used non-OEM parts for repairs.¹⁵ According to the Federal Trade Commission (FTC), Harley-Davidson, in its written warranty, told owners of its motorcycles that “the use of parts

⁷ Kevin Purdy, *Nikon is Killing its Authorized Repair Program*, iFIXIT (Dec. 9, 2019), <https://www.ifixit.com/News/nikon-is-killing-its-authorized-repair-program>.

⁸ See, e.g., *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451, 458 (1992) (“Kodak also pressured Kodak equipment owners and independent parts distributors not to sell Kodak parts to ISO’s.”).

⁹ FED. TRADE COMM’N, *NIXING THE FIX: AN FTC REPORT TO CONGRESS ON REPAIR RESTRICTIONS 22* (2021); Daniel A. Hanley, *The First Thing a Biden FTC Should Tackle*, SLATE, Nov. 18, 2020, <https://slate.com/technology/2020/11/biden-ftc-right-repair-exclusive-contracts.html>.

¹⁰ iFIXIT, *REPAIR MARKET OBSERVATIONS* (2019), <https://www.ifixit.com/Document/5572/pdf>.

¹¹ Norman Hawker, *Under Threat: Competition in the Automotive Service Aftermarket* 9, 13 (Am. Antitrust Inst., Working Paper No. 08-05), https://www.antitrustinstitute.org/wp-content/uploads/2018/08/AAIworking-paper-08-05_122920081621.pdf.

¹² FTC, *supra* 9, at 23.

¹³ HANLEY, KELLOWAY & VAHEESAN, *supra* note 4, at 11.

¹⁴ 15 U.S.C. § 2302(c).

¹⁵ FTC, *supra* note 9, at 8.

and service procedures other than Harley-Davidson approved parts and service procedures may void the limited warranty.”¹⁶ U.S. PIRG found that out of 50 surveyed home appliance manufacturers 45 indicated they voided warranties in the event of unauthorized repairs.¹⁷

In addition to these tactics, manufacturers have disparaged independent parts makers and service providers. They have alleged that they are inferior in quality and could compromise the reliability of the product. The potential dangers of using parts and service not authorized by manufacturers have been a recurring theme. For instance, appliance and electronics manufacturers have alleged that independent repair of their devices increases the risk of fire and other property damage due to technician negligence and the use of “non-genuine” parts. On this particular claim and general safety claims, the FTC found that the manufacturers provided little or no substantiating evidence.¹⁸

Through these practices, manufacturers create and maintain a closed system of repair and maintenance. They marginalize and exclude independent parts manufacturers and service providers.

II. Destabilizing the Meaning of Ownership and the Many Adverse Effects on Customers

Manufacturers’ monopolization of aftermarkets has destabilized and narrowed our common-sense understandings of ownership. They have deprived product owners of the right to repair items at home and tinker with their appliances, devices, and vehicles—a traditional right of ownership in the United States and throughout the world. For instance, the monopolization of aftermarkets for cars prevents mechanically minded and curious owners from attempting to perform simple (and not so simple) repairs in their garages. Further, it robs owners of the ability to patronize independent shops and technicians. By compelling product-owners to do business with them and their network of approved technicians for the life of a product, which can be many years, OEMs have blurred what was once “a clear line between products and services.”¹⁹

By undercutting the rights that traditionally came with ownership,²⁰ manufacturers have forced product owners into high-cost manufacturer-controlled service networks. By eliminating or marginalizing independent competitors in aftermarkets, manufacturers can coerce customers into a captive service relationship. Further, in the absence of effective price competition from independents, manufacturers and their service providers can raise prices for parts and service. Given the size of these aftermarkets, a five or ten percent inflation in prices for parts and service can mean consumers collectively paying millions or billions of dollars more annually.

¹⁶ Complaint at 2, In the Matter of Harley-Davidson Motor Co. (FTC 2022), Matter No. 212 3140.

¹⁷ NATHAN PROCTOR, U.S. PIRG EDUCATION FUND, WARRANTIES IN THE VOID 10 (2018), <https://publicinterestnetwork.org/wp-content/uploads/2018/10/Warranties-in-the-Void-U.S.-PIRG-Education-Fund-Oct2018.pdf>.

¹⁸ FTC, *supra* 9, at 28.

¹⁹ AARON PERZANOWSKI, THE RIGHT TO REPAIR: RECLAIMING THE THINGS WE OWN 7 (2022).

²⁰ AARON PERZANOWSKI & JASON SCHULTZ, THE END OF OWNERSHIP: PERSONAL PROPERTY IN THE DIGITAL ECONOMY 122 (2016).

Higher prices for parts and service for cars and appliances hit lower-income households hardest. They typically do not have savings or other liquid assets to cover emergency expenses. In a survey, the Federal Reserve found that nearly 40% of adults in the United States in 2019 could not cover a \$400 emergency expense without borrowing money or selling a possession.²¹ For many low-income households, meeting such an emergency expense means turning to predatory credit, such as a payday or title loan. A nontrivial fraction of payday loan borrowers reported taking out these loans to cover an unexpected car repair.²² Given these realities, more expensive auto repairs can mean the difference between paying for a muffler replacement out of pocket and paying for it by taking a payday loan with an annual percentage rate of upwards of 400%.²³

Aftermarket monopolization can also impose service delays on product owners. Whereas independent repair shops were and still are in large and small communities alike, manufacturers and their service networks are frequently absent in rural areas.²⁴ Manufacturers may require owners to drive their vehicles or transport their home appliances and farm equipment a long distance for service or mail their electronic devices. This can mean waiting days for an authorized technician to repair a broken tractor. One farmer reportedly drove four hours to obtain a replacement part for his combine and waited another day for installation.²⁵

The consequences of delayed repairs can be severe. Consider the economic and social costs in agriculture and healthcare. Without a functioning combine, farmers may not be able to harvest crops. Postponing harvesting can mean losing a year's crop or harvesting a lower quality crop, diminishing farmers' annual income.²⁶ Without functioning ventilators, hospitals may be unable to operate at capacity and treat all seriously ill COVID-19 patients in their community.²⁷

Due to higher prices for parts and service, many consumers may opt not to repair damaged or worn-out products. They may make do with a broken but still functional item for an extended period. An everyday example is broken smartphone screens: More than 60% of Americans do not get them fixed.²⁸ And the high cost of repairs may compel earlier replacements of products. The collective dollars at issue are huge: U.S. PIRG estimated that "Americans would save \$40 billion (\$330 per family) per year if we repaired more products and used them longer."²⁹

²¹ Bd. of Governors of Fed. Res. Sys., *Economic Well-Being of U.S. Households in 2020 – May 2021*, <https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-dealing-with-unexpected-expenses.htm>.

²² PEW CHARITABLE TRUSTS, *PAYDAY LENDING IN AMERICA: WHO BORROWERS, WHERE THEY BORROW, AND WHY* 5 (2012), https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pew_assets/2012/pewpaydaylendingreportpdf.pdf.

²³ *What is a Payday Loan?*, Consumer Fin. Protection Bureau, <https://www.consumerfinance.gov/ask-cfpb/what-is-a-payday-loan-en-1567/>.

²⁴ HANLEY, KELLOWAY & VAHEESAN, *supra* note 4, at 16.

²⁵ Mae Anderson, *Without 'Right to Repair,' Businesses Lose Time and Money*, ASSOC. PRESS (Aug. 10, 2021), <https://apnews.com/article/technology-business-9f84a8b72bb6dd408cb642414cd28f5d>.

²⁶ HANLEY, KELLOWAY & VAHEESAN, *supra* note 4, at 16.

²⁷ PERZANOWSKI, *supra* note 19, at 43.

²⁸ Jared Gilmour, *Americans Break Two Smartphone Screens Each Second, Costing \$3.4 Billion a Year, Report Says*, MIAMI HERALD (Nov. 21, 2018 5:51 PM), <https://www.miamiherald.com/news/nation-world/national/article222040170.html>.

²⁹ Nathan Proctor, *Right to Repair Off to the Races in 2021 with 14 Active States*, U.S. PIRG (Jan. 22, 2021), <https://pirg.org/articles/right-to-repair-off-to-the-races-in-2021-with-14-active-states/>.

III. Suppression of Valuable Entrepreneurial Opportunities

Maintenance and repair are promising business opportunities for millions of Americans. In many instances, they require modest upfront capital and technical know-how. Think of kiosks at the mall that repair smartphones. They can be a path to wealth and genuine independence.

These entrepreneurial opportunities appear especially important for people of color. Whether on account of racial discrimination or uncertain immigration statuses, many are shut out of the traditional labor market. As a result, opportunities to start shops to service electronics, appliances, and vehicles are especially valuable to Black and brown Americans.³⁰

Aftermarket monopolization closes off an important avenue for entrepreneurship. By withholding parts and tools and discouraging customers from patronizing unaffiliated service providers, manufacturers can eliminate or marginalize independent firms and deter new entrants in aftermarkets. The suppression of these entrepreneurial opportunities hurts all Americans, and the impacts may fall disproportionately on people of color.

IV. Environmental Degradation

More expensive parts and service can change the repair versus replacement calculation. Easy and affordable repairs promote the longevity of durable goods. Owners of cars, farm equipment, and smartphones are likely to keep them for a longer time if they can repair them and maintain their functionality at a reasonable expense. In contrast, costly or difficult repairs encourage customers to replace existing products more quickly. For instance, more expensive car repairs are more likely to mean a car is “totaled”—the cost of repair is greater than the vehicle’s value—in the event of a crash.³¹

By encouraging replacement over repair, manufacturers’ monopolization of aftermarkets contributes to environmental damage and resource depletion. Decreasing the average life cycle of a car by just a year can mean millions of more cars are sent to landfills and manufactured over a decade. That means more land devoted to storing waste, more energy and natural resources consumed, and more greenhouse gases emitted.

Electronic waste or e-waste is especially harmful. Millions of computers, phones, and televisions are sent to landfills in the United States and abroad every year, especially to countries in the Global South. This e-waste is a small fraction of all solid waste but is exceptionally damaging to the environment. These products contain toxic metals, such as lead and lithium.³² They can leach

³⁰ FTC, *supra* 9, at 3. See also GRAHAM WRIGHT ET AL., REDEFINING RISK: RACIAL DISPARITIES IN ENTREPRENEURSHIP AND FINANCIAL WELLBEING 1-2 (2019), <https://heller.brandeis.edu/iere/pdfs/racial-wealth-equity/racial-wealth-gap/redefining-risk-racial-disparities.pdf> (“There are over two and a half million Black owned businesses in the United States, a rate that increased by over one-third between 2007 and 2012. These businesses are primarily (more than 95 percent) sole ownerships with no paid employees. These businesses are largely concentrated in social assistance, health care, and repair, maintenance, personal and laundry services.”) (emphasis added).

³¹ PERZANOWSKI, *supra* note 19, at 22.

³² Amy Yee, *Electronic Marvels Turn into Dangerous Trash in East Africa*, N.Y. TIMES (May 12, 2019), <https://www.nytimes.com/2019/05/12/climate/electronic-marvels-turn-into-dangerous-trash-in-east-africa.html>.

into groundwater supplies and contaminate water used for drinking and agricultural purposes. When these electronics are incinerated, the toxins are released into the air and contribute to an assortment of serious ailments, including cancer.³³

V. Conclusion

The law structures business practices and competition.³⁴ It can encourage the marketing of high-quality goods and fair treatment of customers or encourage the opposite. In 1975, Congress passed the Magnuson-Moss Warranty Act, which generally prohibits manufacturers from conditioning the effectiveness of their product warranties on consumers' use of their parts and service.³⁵ The current FTC has made enforcing this law a priority and brought multiple actions against manufacturers that violated it.³⁶ Members of this Subcommittee should urge the FTC to press ahead with this enforcement effort and use its full suite of statutory authorities to protect the public's right to repair.³⁷

In addition to calling for more and broader FTC action, this Subcommittee and Congress can directly rein in aftermarket monopolization by original equipment manufacturers and restore and protect fair, open markets for parts and service for all durable goods. Congress should strengthen the Magnuson-Moss Warranty Act by empowering the FTC to seek monetary penalties, not just injunctions, against violators. But more action from Congress is necessary to protect the public's right to repair. Toward this end, the Fair Repair Act introduced by Chairman Morelle would be an important step forward in the fight for open aftermarkets. His bill would ensure the wide availability of parts on fair and reasonable terms and permit independent technicians and shops to flourish again. And without a captive customer base for parts and service and an easy source of revenues and profits, OEMs may have a stronger incentive to design, manufacture, and market high-quality appliances, electronics, equipment, and vehicles.

³³ Hannah Beech & Ryn Jirenuwat, *The Price of Recycling Old Laptops: Toxic Fumes in Thailand's Lungs*, N.Y. TIMES, Dec. 8, 2019, <https://www.nytimes.com/2019/12/08/world/asia/e-waste-thailand-southeast-asia.html>.

³⁴ Sandeep Vaheesan, *The Morality of Monopolization Law*, 63 WM. & MARY L. REV. 119 (2022).

³⁵ 15 U.S.C. § 2302(c).

³⁶ Lesley Fair, *FTC Announces Three Right-to-Repair cases: Do Your Warranties Comply with the Law?*, FED. TRADE COMM'N (July 7, 2022), <https://www.ftc.gov/business-guidance/blog/2022/07/ftc-announces-three-right-repair-cases-do-your-warranties-comply-law>.

³⁷ The FTC Act prohibits "unfair methods of competition" and "unfair or deceptive acts or practices." 15 U.S.C. § 45.

Mr. MORELLE. Thank you very much, Mr. Vaheesan.

I am going to just ask a couple of questions, and I am going to reserve the right to come back and ask more, but I do want to give my colleagues the opportunity to ask questions if they have so—so if that is all right, I will proceed that way.

So I wanted to—Mr. Proctor, if I might start with you. I mentioned in my opening comments that manufacturers used to make repair parts, tools, and information like schematic diagrams pretty accessible to consumers and independent repair shops.

Could you just sort of describe what has happened now with the increased reliance on digital technology and how that has, both in subtle ways and not subtle ways, really changed access to the necessary repair materials over the last—in particular, the last couple of decades?

Mr. PROCTOR. Yeah, it is a great question. I think that there is—there is two ways to answer this. The first is, the regulatory environment has changed as the technology has changed. So if you go back, and you are an auto maker in 1985, and you wanted to make a car that no one could fix, the technology—you could do it. You could put a padlock on the hood, but I don't think that would be tolerated by the—you know, I think somebody would step in and stop that.

And, now, it is actually a lot easier to accomplish that same feat. You can do it with software. And, also, nobody is stopping them from doing it, right? I heard a story the other day from somebody who knocked a sideview mirror off their car. They put another side mirror on. The car detected that it was a—you know, a foreign part, like it was a new part. The serial numbers didn't match, and it refused to start. Like, this is the—and this is trivial technologically to do. But it is also a product of what the government and what consumers are letting these companies do.

And so I think both things need to change, right? We need to design things to be fixable. And then, when I think companies cross the line, there needs to be a consequence. They need to be drawn back so that we can use the technology in our lives.

Mr. MORELLE. You raise an interesting point, because what you are really describing is this technological handshake that happens. And you can see it even with printers. So I have a printer—a home printer, which it is interesting. The fact that you can use third-party cartridges has really created much more competition in the marketplace. You can even get them refilled or what they call recharging a cartridge.

But when I do that, my printer, obviously because it isn't able to complete the handshake with the OEM-brand cartridge, will—it knows that there is a cartridge that is not—even though the cartridge might work perfectly fine—I mean, it is just filled with ink. It is—I don't know how complicated that is. I certainly couldn't do it, but I don't think it is technologically all that much of a marvel. But that handshake is unable to be completed. So it knows that I haven't used its brand cartridge.

So that is what you are talking about, is really—and more and more sensors and more built-in software for consumer goods of all kinds is now going to be ubiquitous. It is already ubiquitous. And that really does allow and affect an inability, then, to make those

repairs, in some cases. In some cases, it just notifies you and tells you you have been a bad consumer because you haven't bought their particular product.

But when you think about it—and I think you would agree that that kind of—that inability to have that competition really makes also the OEM less interested in consumer innovations, right, if you don't have competition in the marketplace. So I often think of—it is like the old days when you had the razor. You didn't have to buy the blade necessarily from the manufacturer. People could just, you know—now, that is not a repair issue, but it is effectively the same kind of thing. Now, could you imagine an electronic sensor that tells you you are not using the right blades, so, therefore, you can't use the razor anymore? I don't know how they would stop that, but—

Mr. PROCTOR. Yeah. I wanted to make one comment on that, because I think it is an important point, which is sometimes the aftermarket produces higher-quality parts than the original manufacturer. Like, the first time I repaired the battery in my iPhone 6, it doubled the life of the battery of the phone, because somebody figured out how to make a better battery that fit that form factor.

And there is no reason to think that some company couldn't make a way better printer ink that doesn't run as much and is cheaper—you know, so it is not just that, oh, the manufacturer has like this pristine, perfect technology, and everybody else is just competing for a piece of that. Sometimes there really—they are improvements, and that—and we should allow that innovation to occur that—I mean, there is a huge history of that in car culture. Like, that is how a lot of our cool car technologies came about, because tinkerers actually added to the product and car companies learned from them.

Mr. MORELLE. Well, there is no question. I think if you think about sort of the whole notion of capitalism is this ability to compete, and competition typically has two benefits. One is innovation, and two is downward pressure on price. So if you remove that leverage in a sense, economic leverage, you have really now subjected the consumer to higher prices for supplies and other things or replacement parts.

If I could, Ms. Williams, in the FTC's report to Congress on right to repair in May of 2021, which I referenced earlier, the Commission studied the impact of repair restrictions on farmers.

By the way, I will just note parenthetically, the number one industry in the State of New York is agriculture. I am sure you know that, and I don't think most people think of New York as an agricultural State, but it is in both dairy and crops. And so I appreciate all the work you do.

But, in one instance, as it related to restrictions on farmers, it was found that a farmer in Kansas had to wait 32 days for repairs on agricultural equipment, which ultimately resulted in a loss of tens of thousands of dollars in revenue. It is cited in the report.

And you discussed that failure to repair farm equipment can be detrimental without swift legislative solutions.

I just—you know, if you could talk about that, because I think people tend to think of, oh, it is harvesting season, so you have got, depending on where you are in the country and what you are har-

vesting, 2 months, 3 months. But weather doesn't allow you to harvest every day during that season. So you may have a relatively short window in a year, and if your harvester or other equipment that you need is unavailable, can you just talk a little bit about that and the impact on yield?

Ms. WILLIAMS. Yeah. Thank you for that question. And I think that raises a really good point, is, you know, when farmers are ready to harvest or plant, you know, it is a matter of hours or days that they need to get that accomplished. And so if their equipment breaks down and they are waiting for a dealership to come out and repair, and that dealership is also dealing with, you know, other farms in the area that may be also facing, you know, repair needs, it could be, you know, outside of that window of prime harvest season.

So not only is that impacting your overall time to get a crop in, you know, it impacts your—you know, your revenue as a farm and your ability to sell, you know, a product to market, because if it is no longer a quality good, that market may say, hey, we are not interested anymore. And now you have lost out on that revenue.

So, you know, each farm, you know, is different in what that revenue may look like, but it is, you know, a key, you know, thing to highlight that there is lost revenue potential there.

Mr. MORELLE. I will—I will just note, I was—not too long ago, I had a—probably a moderate sized farm in my district, and the farmer wanted to show me his robotic milking machines and what they are doing. It is fascinating stuff. But while I was there, I—he pointed to a piece of equipment that related to his crops, and he said—so I asked him about it. And he said, This is a—I have been waiting and waiting and waiting for months now for someone to come repair this piece of equipment, which I need, and it is just sitting idle. It is costing me—it was—it is pretty expensive. I don't know that there is any inexpensive farm equipment anymore, so—but he was just—used it as a practical demonstration of the challenges he faced because he couldn't get someone to come in and repair the equipment.

Ms. WILLIAMS. Yeah. And I think, you know—and this is all part of, you know, the wider, you know, issues that I think farmers are running into. Yes, some of it is supply chain, but if you don't have, you know, a dealership that is willing to come out in a timely manner, that slows you down. And like you said, it can cost you, you know, thousands of dollars over those days or months that they are unable to get those repairs.

And I think, you know, it is not just harvest season, but as you were talking about a robotic milking system, you know, those cows need to be milked twice or three times a day. So if you can't get in a company that has—is the only availability to fix that robotic milking system, you know, you are shut down and not able to, you know—you know, milk your cows or, you know, just do everyday things that you should be able to do.

Mr. MORELLE. Yeah. Let me ask you, Mr. Vaheesan, a question. And I do want to allow Dr. Burgess opportunity, and then I will come back, and I have additional things I would like to ask.

But, in your testimony, you highlighted some of the recent actions taken by the FTC using their powers under the Magnuson-

Moss Act—it was in your testimony—which protects consumers from illegal conditions related to repair being placed on product warranties.

Can you just expand on the role of the strong enforcement by the FTC to protect the right to repair, and whether it be providing additional resources or rulemaking authority, what more Congress might be able to do to help the FTC in this area?

Mr. VAHEESAN. Thank you for that question, Chairman. So the Magnuson-Moss enforcement activity of the FTC is a very positive start.

Mr. MORELLE. I am going to ask—I am sorry. I am going to continue to ask you to speak up if you can. I apologize, but the audio here is not great.

Mr. VAHEESAN. Yes. I will certainly speak up.

So this past few months, the FTC has brought three Magnuson-Moss cases, and the FTC should continue its enforcement activity in this area because many OEMs flout the law. I noted in my testimony that U.S. PIRG found that, out of 50 surveyed home appliance manufacturers, 45 openly disregard Magnuson-Moss. So deterrence will require vigorous FTC enforcement of this particular statute.

But the FTC should do more and has legal authority to do more specifically to prohibit unfair methods of competition as well as unfair or deceptive acts or practices. So these are its antitrust and consumer protection powers, respectively.

So there are two things it can do. So, first, it can challenge refusals by OEMs to sell parts and tools to independent repair shops as an unfair method of competition. Second, it can challenge false claims made about independent parts and service, whether it is about their safety, reliability, or overall quality.

So neither OEMs nor authorized businesses should be permitted to compete through deceptive marketing, and that is unfortunately what some OEMs are doing at present. But Congress can help the FTC carry out its consumer protection and antitrust missions.

First, the FTC has a lot to do but, unfortunately, has far fewer staff than it did in 1979, and obviously the economy as well as the population of the United States have grown significantly during that time.

Second, Congress should bolster the FTC's remedial powers. In a decision last year called *AMG Capital Management v. FTC*, the Supreme Court stripped the FTC of the power to obtain restitution and other monetary relief in competition cases. So, right now, at least against first-time violators of FTC competition law, the FTC can only seek an order telling that company, go forth and sin no more. That, as you might guess, provides insufficient deterrence against lawbreaking.

But, thankfully, Congress has a good model to follow when it comes to agency remedial power. It can emulate what it did in the Dodd-Frank Act when it gave the CFPB expansive monetary relief powers so that CFPB can seek refunds of money, restitution, disgorgement of compensation for unjust enrichment, payment of damages or other monetary relief, and civil money penalties. So I hope Congress seriously considers granting the FTC comparable powers.

Mr. MORELLE. Terrific. Thank you.

I am now going to reserve some time for further questions, but I am happy to turn to my colleague, Dr. Burgess.

Dr. BURGESS. And I thank the chairman.

So, Mr. Chairman, let me ask you. I mean, this is—I was given a bill that you have introduced on right to repair. Is this a legislative hearing on that bill?

Mr. MORELLE. This is a subcommittee on legislative and budget implications, and I think, in the bill, it references the Rules Committee and empowers us to be able to hold a hearing on what kinds of things around right to repair can be done legislatively and budgetly to help consumers.

Dr. BURGESS. So let me just ask our witnesses: Are you familiar with the legislation that Mr. Morelle has introduced?

Which bill is it? H.R. 4006.

Ms. WILLIAMS. The Fair Repair Act, yes.

Dr. BURGESS. So do you have an opinion as to whether or not this legislation would be helpful for the things that are being talked about before the Rules Committee today?

Yes. Speak, sir, if you would, Mr. Proctor.

Mr. PROCTOR. Thank you, Dr. Burgess. Yes. I do strongly support—

Dr. BURGESS. Okay.

Mr. PROCTOR [continuing]. That as a remedy. And I do think that—

Dr. BURGESS. Fair answer.

Mr. PROCTOR. Okay.

Dr. BURGESS. Ms. Williams, let me ask you.

Ms. WILLIAMS. Yes. We do think—we have supported the bill, and we do think it is a good avenue to address right to repair.

Dr. BURGESS. Okay. And our remote witness? Were you able to hear the question?

Mr. VAHEESAN. Yes, I heard the question, and I do support the bill and believe it would help restore Americans' right to repair.

Dr. BURGESS. So help me here, because, in reading the bill, section 4, rules of constructions, limitations, and nonapplication, if you are familiar with that, and it goes through some things about the security functions are not excluded. Okay. Fair enough.

Trade secrets protection. Okay. Fair enough.

Section 4, nonapplication to motor vehicles or motor vehicle repair manufacturers: Nothing in this Act shall apply to a motor vehicle repair manufacturer, a manufacturer of a motor vehicle equipment, or a motor vehicle dealer acting in that capacity.

I guess the question I have back to you, since you feel that this legislation is consistent with the goals of this hearing, it seems like that excludes a big chunk of what you are trying to include. Am I correct in that?

Mr. PROCTOR. That is correct. And would you like me to expand on that? Thank you.

Dr. BURGESS. I wish you would, because I don't understand it.

Mr. PROCTOR. So Chairman Morelle mentioned that, in 2012, Massachusetts passed the Fair Repair Act, which passes both on the ballot and then through the legislative—it actually passed the ballot 86 to 14, which is a higher percentage than actually people

in Massachusetts who own cars. And it was to create parity around access to digital diagnostic tools, because that was becoming an issue.

And now there is other issues with car repair, which is why there are two other bills actually in this Congress right now, one by Representative Darrell Issa, called the SMART Act, which has to do with the ways in which manufacturers are increasingly using design patterns to prevent aftermarket competition for parts. And then there is a bill by Representative Bobby Rush of Illinois, called the REPAIR Act, which expands access to digital diagnostics, including things that are over the airwaves.

So as technology is improving and getting more developed, there is new techniques to restrict repair, and there have been new bills. This bill would essentially bring other kinds of technology up to the point where cars are, you know, circa 19—or 2012. So cars are a little bit ahead, but there are still issues, and then other kinds of technology do not have as much protection as cars.

Dr. BURGESS. So let me ask you a question. Saturday mornings I am frequently driving around the district from point A to point B. There is a 5-hour car show on one of my local radio stations, and I usually have that tuned in on those hours on Saturday morning when I am traveling around the district. The reason I do that is because I have found that most of the cities that I represent, constituents from those cities will call into this car show with questions.

And one of the issues that has come up that is a burning issue apparently locally are the issues surrounding the use of software in automobiles and the fact that the software is not owned by the automobile owner but owned by the software company. And, you know, fair enough. We need to have that discussion, and people need to understand.

I think, when I buy a car, I buy the car—the spark plugs, the fuel line, and, yes, the little items on the screen. But apparently that is not always the case anymore, and there are separate licensing agreements with the software that—just, quite frankly, I don't know that owners—automobile owners are as aware of that as perhaps they should be. I don't know if we as automobile owners are as aware of the data collected by our automobiles that may be—even if it is still wholly contained within the vehicle, at some point may be subpoenaed, or there may be writs and what not. I am not a legal person, but it is certainly discoverable information in the case of an automobile accident.

So, I mean, there is a lot of aspects to this that I think need to be explored. I am just not sure that the Rules Committee is the place to do that. Again, we have committees of jurisdiction that cover small business, that cover financial services, that cover even the Federal Trade Commission. As I mentioned, the Energy and Commerce Committee has jurisdiction over the Federal Trade Commission. So I just think it might be useful to explore this on a broader footing than the—than we are doing today.

I think the—and one of the things that worries me is, as, you know, you hear the comments surrounding those types of activities, is the—we may get to a point where you don't own a car anymore. You may just buy a license to operate the car, basically lease the

car and lease the software. And maybe that is a good thing. Maybe it is not. I am old school. I always think owning the nuts and bolts that you purchased in an automobile is a good thing.

But we may be—and even legislation like this and the other legislative products that were mentioned may be driving us, no pun intended, in a direction that would be lease only; we would not be—we would not be able to own our own vehicles. And, in a free society, I don't know that that is a good thing.

In many ways, the freedom that we have derived from our love affair with the automobile has made this country what it is, and I remember George Will wrote on this several years ago about the freedom to—freedom to drive is the reason that people value living in a free society.

So I just offer that out there, because we know some things are changing in the industry. We know some things are going to look vastly different 10 years from now than they do today. But I—while I appreciate the issues that are being brought up today—and I do want to stress I have constituents and supporters who are on—strongly on both sides of this issue, we—

Mr. MORELLE. May I interrupt for just one second before Jennifer leaves to wish her a happy birthday? We want to make sure that I—I would sing to you, but I would not want to ruin your day, but I understand it is your birthday, and I want to join with all your friends in wishing you a happy birthday.

Ms. BELAIR. Thank you.

Mr. MORELLE. Sorry, Mr.—that is the only reason I would interrupt you, Dr. Burgess.

Dr. BURGESS. Fair enough. If you are not going to sing, then I will yield back.

Mr. MORELLE. Well, I do—look, I appreciate it very much.

First of all, you know, our goal in the drafting of the bill, which is—this is not a legislative hearing on the bill, but was really to start to take a more narrow view, but to directly confront the issues related to digital equipment.

I certainly think you make great points about whether or not the expansion of that bill or the work of the Congress to look at automotive, because I think there are clearly parallels here, so I—I take that all as very positive, and I think that is a part of the discussion that ought to go on.

And, frankly, again, this is sort of directed at—because the subcommittee has responsibility for recommending legislative and budgetary things that we ought to be thinking about and the FTC's role, while clearly not exclusively under our jurisdiction, legislative and budget is the subcommittee's charge.

But I very much think that the conversation will expand, because the principles will, I think we would all agree, probably hold no matter what the digital thing is. And I think, actually—and I would be happy to have any—any other witnesses comment on this, but—and I was thinking this, and what Dr. Burgess said further prompted it.

So if I—just to be devil's advocate, there is a couple of things that OEMs might say about this. First of all, the question of—well, let me ask it this way: If you were an OEM and you are building something, and you are sort of trying to figure out what is my prof-

it going to be here, what is the cost of building this, what am I doing, you may anticipate, okay, there is X amount of revenue I am going to derive on the sale of the good itself, so the phone. But I am sort of calculating in here what I think I can get in return per unit on service costs, right?

And so could they make an argument or would they make an argument that, if you don't allow us sort of the exclusivity to provide the repairs and do service on it, or if you don't allow me to have a relatively short period of ownership and then forcing this planned obsolescence, that my revenues won't be sufficient and now I will have to raise the cost of goods?

So I am just—you know, I suspect that is probably part of the argument, that that is a way to have a longer tail on revenues other than the sale of the good itself, and I just wonder if anyone wants to comment on that. Yeah.

Mr. PROCTOR. I am happy to comment on that. Sandeep might also have thoughts.

I mean, I think it goes back to Dr. Burgess' comment. Like, you can own a car but then, also, you are leasing the car. I believe in truth in advertising. If you are going to sell somebody something, sell it to them. If you are going to lease something to somebody, lease it to them. If you tether their future purchases to a secret agreement that you baked into the technology that they don't know about, that is deceptive, and we should stop that. They should be required to, I mean, at a minimum, disclose that.

But it is also—in antitrust law, that is a tying arrangement, and that is supposed to be enforced against, but these are just ubiquitous, right? I mean, the thing we are discussing with cars, this is essentially—these tethering, you know, technologies to force you to buy services from them, they should just be honest with you. They should honor the doctrine of the sale, or they should lease it to you.

And so I do think that that is a really important aspect to this. And if they were to charge you more, at least you would know what you were getting. You wouldn't be—you wouldn't be like, oh, I am buying this thing because it is a low-cost thing, and then it turns out the headlight goes out and you had to pay \$1,600 to get them to put the new headlight in, and you didn't know that they had this gotcha—I mean, you brought up razor blades and printer cartridges, which are, like, this is the experience people have. Oh, this printer is only 40 bucks, and the ink is 75, right? So we want companies to compete in commerce. We don't want them to deceive people in the process.

Mr. MORELLE. I wonder, Ms. Williams or Sandeep, if you have any additional comments related to that question?

Mr. VAHEESAN. Sure. So a couple of thoughts. So I think Nathan is absolutely right, we want companies to be forthright with customers. It is better to have them charge more upfront than they hide service and parts fees that are unknown and, frankly, unknowable when someone purchases a car, for example. You don't know how often the car will break down. You don't know exactly how much different parts and services will cost. It is better for manufacturers to be truthful and tell them. You know, shift the cost toward the list price and away from parts and service.

But even apart from that, I think there is a reason to believe that the cost shifting might not actually be as significant as some of the OEMs claim. And the main reason is, when people are shopping for a car, for example, there is competition among different manufacturers. So Honda competes against Toyota. They both compete against Ford, GM, and Kia. So there is price competition at the upfront level among different brands, whether it is cars or the farm equipment or smartphones.

But once someone has purchased one of these items, they are captive. So if I purchase a Honda and I need servicing on it, I have to take it to a Honda dealership. I cannot take it to a Ford dealership, because they don't have the necessary parts and tools, and increasingly cannot take it to an independent dealer either because the OEMs are withholding the necessary items from them.

So to the extent costs are shifted to the product market, you know, I think there is good reason to believe that competition will discipline OEMs' ability to raise prices.

Mr. MORELLE. Is—I am not sure. Did you have anything to add on that, Ms. Williams?

Ms. WILLIAMS. And I will just add and kind of going off what, you know, the other witnesses have said, just, you know, I think OEMs would be surprised maybe by how many independent repair shops or, you know, farmers or other, you know, individuals would be interested in purchasing that technology. And maybe if there is an additional revenue stream for them, you know, if they are able to make their technologies more available.

Mr. MORELLE. Yeah, you raise an interesting point. I have thought about, you know, over the years, while I am thinking this through. So there are OEMs that have authorized dealers and repair shops. And I have often thought, if you really wanted to extend that to consumers, you would allow any third-party repair shop, if they met standards that you just make available, to say, okay, as long as you meet these standards, you are an authorized dealer, but they also don't do that or rarely do that.

So even the degree to which they have authorized dealers who might be third party, they are very tightly constrained, and that is intended, again, I think, to make sure that they corner the ability to have those products available.

It was interesting, in Dr. Burgess' comments, you know, talking about sort of the—you know, he used automotive, but it would apply, it seems to me, to anything in terms of leasing versus owning, right? So I suppose you could say, if you were a even home-office printer company or if you were a farm equipment manufacturer, you could say, look, we don't sell anything. We are just going to lease it. You really can't buy the piece of equipment. You can lease it from us.

They don't do that. I am sort of curious, because that sort of seems more in line. Then you could make a decision as a consumer, do I want to lease it and pay the lease price every year, whatever the rental is, but all the obligations for service would be on the OEM or the lessor? But that doesn't happen.

Is that a growing trend? Is that something that—or is there a real reason why they don't want to be leasing and they do want to sell, but they just want to have both their cake and eat it too?

And I will start with Mr. Proctor.

Mr. PROCTOR. I just want to make a quick comment. They are doing both at the same time. They are selling it to you and charging you rents on it.

Mr. MORELLE. Right.

Mr. PROCTOR. And so why would they want to stop that? That is the gravy train, right. I think they will keep doing that until we stop them. So I don't know what is better—

Mr. MORELLE. So do you expect—so let me ask you a question. Could you see a time in the future where if we really stepped in as the Federal Government and said, okay, you may not do this. So as long as it doesn't affect intellectual property and patents, you are going to be required to provide diagnostic tools, diagnostic software codes, and you are going to be—we are going to require that anyone who holds out a shingle is going to have access to that equipment, is going to be able to go directly to consumers.

Do you suspect if that happens that then they will stop selling products and move more to leasing? Which, I guess, a lease would be a fairer way of doing it. It would be a more honest and transparent way of doing it. I am not sure consumers would like that. They may opt not to do business with a printer company that is only leasing the printer or, you know, a harvester or some other type of equipment. I just wonder if that is a possibility.

Mr. PROCTOR. They could choose to run their business within the bounds of the law in any way they want. I think that, you know, Dr. Burgess' comments about wanting to own things, I think most people are wired that way. So I think that what they would see is people actually want to own the products that they buy, and they would rather buy something than to be tethered to some company and to need their constant approval and to think that—you know.

So some—I think some items people could operate that way, but, like, I think these companies would love to move to a constant guaranteed revenue model, but I just don't know if consumers are going to go for it. And if other competitors are going to sell it to you and you would feel more secure in that, I think that they are going to have a hard time convincing everyone to give up the idea of ownership across the board.

Mr. MORELLE. Yeah, my guess is that you are right, that they want the advantages of both, and I think you are right, too, that consumers are going to want to buy things. I think if you are a farmer, you want to buy equipment and hopefully not just use it for the lease term of 5 years, but if you are making a significant investment, you probably have equipment that you could use for 25, 30 years without having a replacement cost.

But any comment on that, Ms. Williams?

Ms. WILLIAMS. Yeah. I would tend to agree, you know, farmers make, you know, their decisions. Some, you know, may choose to keep, you know, or purchase equipment and keep it for a year or 2 and just like to turn over equipment, you know, more. But others, that is a long-term investment where, you know, you have that tractor for 20, 30 years, and you want—when you buy it, you want the rights to do whatever you need to do to make sure it works for your operation. So I think, you know, it comes down to consumer

choice and what they want from the market or what they want from OEMs.

Mr. MORELLE. Yeah. I also think, not only can you own it, can you repair it, you can also sell it. So I am sure there is some people that want to buy it because they figure there is a resale value inherited there.

And I apologize, Mr. Vaheesan, did you have any comment on that?

Mr. VAHEESAN. Yes, Chairman. I think you and Dr. Burgess raised a critical point here, that there has been a dangerous blurring of the line between products and services. Twenty, certainly 30 years ago, people knew what fell in the service category, what fell in the product category. And now, many OEMs are, as you said, trying to have their cake and eat it too, where they present something as a sale, I purchase a car and drive it off the lot, think it is mine. But functionally, in many ways it resembles a lease where they have a captive service relationship with the manufacturer.

And if OEMs want to lease products, that is fine. That is a good option for many people. But they should be truthful and honest about it instead of trying to disguise a sale as a functional lease.

Mr. MORELLE. So thank you for that. Let me stay with you for a follow-up question on an item you raised in your testimony. You talked about the different ways companies are restricting repairs for consumers.

As an expert on competition, can you speak further on what these practices do to the market, so in a larger way what this is doing to markets?

Mr. VAHEESAN. Sure. So aftermarket monopolization affects us as consumers, and that is maybe the way we can all relate to it most easily, but the harms are not restricted to customers. Through some of the practices I describe in my testimony, refusal to sell parts and tools, disparaging independent shops and parts makers, they are excluding businesses from the marketplace.

So they are suppressing an important and a channel for entrepreneurial activity for many people. Or to put it more concretely, some of these unfair practices by OEMs mean fewer neighborhood mechanic shops and fewer kiosks at the mall to fix cars and smartphones at a reasonable price respectively.

So they are really choking off business creation opportunities for many Americans. And traditionally, these were very attractive business opportunities because it required, you know, some important technical know-how but often only modest capital to start a repair shop service and an assorted array of durable goods. So the effects on consumers are real, but the adverse effects on small businesses and small business formation is significant and important too.

Mr. MORELLE. Yeah. You also mentioned the impact this has on highlighting or exacerbating inequality. Could you just comment, relative to underserved areas and rural communities in particular, how stronger enforcement can help mitigate those inequities?

Mr. VAHEESAN. Sure. So we have seen decades of disinvestment from rural areas and, traditionally, the creation of independent repair shops and technical service centers have been an especially important path for entrepreneurs in rural areas. And through

aftermarket monopolization, OEMs have further contributed and compounded the economic, political, and social ails facing rural areas because they have cut off an important way that rural Americans can start businesses, support themselves, and generate tax revenues for their local communities.

Mr. MORELLE. Ms. Williams, when I talk to people about this issue—and I have been, as I said, involved with it for a number of years—they think, understandably, about cell phones, they think about laptops, they think about—you know, frankly, now, because everything has digital equipment, so your oven, your microwave, I mean, all of those consumer electronics. But I think people don't fully appreciate, maybe if you could just expand on the use of digital equipment in farming, particularly as technology has become more and more important around yield, around land use. Could you just talk a little bit about that?

Ms. WILLIAMS. Yeah. So, you know, in recent years, we have seen a lot more investment in precision agriculture, a lot more technology advancement in tractors or other farm equipment where, you know, computers are some of the basis of that tractor, that equipment, and it is helping, you know, keep things straight, you know, when they are planting corn or other crops or just, you know, giving feedback to the farmer on yields or, you know, how to moderate, you know, fertilizer application rates.

So farmers are getting all this data, but I think, you know, as we add more technology to tractors and equipment, it sets, you know, more abilities for if, you know, a sensor fails or if something is just not right and it all feeds back to the computer, sometimes when that happens it can stop the equipment from operating, and, you know, you need to contact a technician to what could be a simple repair or is just something like a part needs to be replaced, but the computer says, no, it can't function. That just feeds back into it.

So, you know, as we increasingly see reliance on, you know, more technologically advanced farm equipment, you know, this issue is going to continue to be pressing, especially as we need, you know, further folks to be able to have the knowledge to repair that. You know, it is not just going in with your tools anymore; it is having to hook up to the computer and diagnose what the issue is and having the capability to fix it.

Mr. MORELLE. I am just sort of smiling to myself as you were mentioning that. My father was a pipefitter, and throughout his life he would repair things, both at the house—and I don't know how he repaired half the things he did. But we still find things that he did around, and it is kind of like, wow, that thing broke and then he fixed it and he fixed it this way. But I am sure if there was a digital piece to it, he would have been at a loss. He was really a mechanic at heart and would always figure out how to do things, but in the analog world not in the digital world.

But, Mr. Proctor, if you could just comment. We do hear arguments from the OEMs saying that the restrictions they put in place are important for product integrity, safety, or just for the reputation of the product. I just wonder if you might respond to those claims.

Mr. PROCTOR. Yeah. I think there is two thoughts I have. The first is, you know, the FTC went through a lot of this evidence from—manufacturers tried to present these arguments. I think if you want to go through the evidentiary record, like the FTC did for 2 years, you come to the conclusion, oh, actually, there is no real proof to any of this.

The other piece is that they sold the equipment and you are the owner now. So they can't say, you know, the way you are handling this equipment reflects badly on us as a brand. It is like, well, you sold it. Don't sell it if you don't want me to own it. So I think, to me, that just comes back to the idea of ownership.

Mr. MORELLE. Yeah. And just to change gears a little bit. You mentioned in your testimony the impact of repair restrictions on the environment, and obviously this is critical, particularly given where we are in the world on climate crisis and the impact of all these things. So could you just elaborate on the harm caused by increased electronic waste?

And I know, for instance, when I dispose of a flat screen TV or a computer, I have to go to a specialized place to bring it. I am not sure that every consumer is as, you know, thoughtful about how to do it. But can you just talk about that in terms of the harm of these electronic goods ending up in the waste stream?

Mr. PROCTOR. Yeah. Like, 70 percent of the toxic heavy metals going into our landfills come from our electronics. You know, you think about what it is, it is plastic and flame retardants and lead and other heavy metals, cadmium, all mingled together, right. It is very difficult to separate them out.

And really, it is really valuable stuff, right. So I remember Sonos, which is a company that makes Bluetooth radios, they had a thing where they let you put it in recycle mode if you wanted to—it basically destroyed the speaker in exchange for like a credit on buying a new one. And I talked to a recycler about that, and he laughed. He was like, how much do you think a Sonos speaker is worth to me? Like, how much—if you just take the weight of plastic and copper out of that thing and the magnet, maybe 3 cents, but it is worth like \$150 bucks as a speaker.

So it is really important to make the electronic waste system work that they can use as much of the electronics as they possibly can. That drives the, like, profitability of that industry, and the more that they can reuse stuff, that means less manufacturing. The manufacturing of new electronics is a huge part of this issue, right. We are blowing up mountains and creating giant radioactive acidic lakes of doom in, you know, Mongolia to get the rare earth metals for our smartphones, and we should be using them for a long time. That is a huge ecological investment. And it helps the whole industry operate if they can reuse those electronics when they come to those electronic waste facilities.

Mr. MORELLE. Before I close, Dr. Burgess, did you have any further questions to ask of the witnesses?

Dr. BURGESS. I probably have said more than I should. I am just—

Mr. MORELLE. Well, we are going to be going through in excruciating detail everything you have said word by word.

Dr. BURGESS. I am concerned about the issue of the funding of this activity through fines. With the Consumer Financial Protection Bureau we had this argument round and round and round. The Constitution was very clear that no activity should happen without the express appropriation from Congress, and using the fines to pay for the enforcement just seems, to me, going down a road that I would not recommend. But beyond that, I don't have any further comment, and I will yield back.

Mr. MORELLE. Thank you, sir.

I would just ask our witnesses, is there anything that you feel you want to add to this conversation that you haven't had a chance to say? Mr. Proctor.

Mr. PROCTOR. Let me just say thank you for having this hearing, and thank you for being such a leader on the topic. We do hope that we can continue having these conversations up here. Like I said in my testimony, I don't think these issues are going to go away, especially, you know, for folks like the farming—the farmers out there who really need access to repair.

Mr. MORELLE. Ms. Williams.

Ms. WILLIAMS. I will just echo that, you know, thank you for having us. And, you know, this issue, you know, as others have said, continues to be, you know, top of mind and just becomes more and more complicated as equipment gets more and more sophisticated. And at some point we are going to have to find answers. And, you know, hopefully we can reach, you know, agreements that works for everybody and just make sure that, you know, consumers have a choice when they, you know, buy their products at different methods or where they get it repaired as well.

Mr. MORELLE. Very good.

Mr. Vaheesan.

Mr. VAHEESAN. Yes, Chairman. Thank you for the opportunity to testify at today's hearing. I think Congress has a special and important opportunity to restore Americans' right to repair, promote the businesses of new enterprises, even encourage OEMs to make higher quality, more durable products, and maybe, perhaps most critically, protect the environment from further degradation.

Mr. MORELLE. Well, very good. I want to—before I close, and I certainly want to thank everyone for participating, but I do have a number of statements, as Dr. Burgess had done earlier, to have added without—for unanimous consent to submit to the record comments from Public Knowledge; testimony from the National Farmers Union; testimony submitted for the Alliance for Automotive Innovation; comments by Auto Care Association, Repair.Org, and the Automotive Aftermarket Suppliers Association.

Without objection, I will submit those all for the record as well.

[The information follows:]

Mr. MORELLE. But, again, I thank the witnesses very much for joining us, for your continued work on what I think is a really important issue and important space for consumers and for small businesses, entrepreneurs, and for the United States generally and the country.

And I want to thank Dr. Burgess for being here, for participating and offering thoughtful comments, and I look forward to our continued discussion on this important issue.

With that, the hearing is closed.
[Whereupon, at 11:15 a.m., the subcommittee was adjourned.]

Statement for the Record
Rules Committee Hearing: Right to Repair: Legislative and Budgetary Solutions to Unfair
Restrictions on Repair
Congressman Michael Burgess, M.D.
September 21, 2022

Thank you, Mr. Chairman. I would like to submit for the record a letter from a constituent of Texas' 26th Congressional District regarding how this issue directly effects his small business.

I am writing to urge the United States Congress to put vehicle owners' interests first by supporting Right to Repair legislation for the auto repair industry.

Unfortunately, as vehicle technology has advanced, new barriers to a competitive repair market have emerged and vehicle manufacturers have shunned the independent repair industry's efforts to negotiate a solution to reduce these barriers. This past May, the FTC released their Nixing the Fix report to Congress which identified multiple barriers to a consumers' right to repair their vehicles and found "scant evidence" to justify these repair restrictions.

Many of your valued constituents are also our customers. It is the do-it-yourselfer who savors repairing his own vintage car; a long-haul trucker who needs quick access to aftermarket parts and repair to keep her truck operating safely; a grandmother who has a trusted and longstanding relationship with her local independent auto repair shop.

The independent auto care industry is responsible for more than 70% of post warranty auto repair. It's essential for American motorists that we break down barriers to vehicle repair; and that owners and their trusted independent repair shops have access to the critical information, tools, and parts needed to keep their cars or trucks on the road safer, longer.

I am asking for Congress to enact legislation that would:

- Protect a pro-consumer and competitive motor vehicle repair market.
- Provide independent repair shops with the rights to critical information, tools, and equipment needed to repair modern cars and trucks.
- Task the National Highway Traffic Safety Administration with developing cybersecurity standards and guidelines to protect vehicle data and systems when repair and maintenance data is accessed by vehicle owners or their designees.

Thank you for your consideration.

Sincerely,

Carl E Gierisch, Jr.
Gierisch Brothers Motor Co, Ltd.
Roanoke Auto Supply, Ltd.
608 N Pine St, Roanoke, TX 76262

Statement for the Record
Rules Committee Hearing: Right to Repair: Legislative and Budgetary Solutions to Unfair
Restrictions on Repair
Congressman Michael Burgess, M.D.
September 21, 2022

Thank you, Mr. Chairman. I would like to submit for the record a letter from a constituent of Texas' 26th Congressional District regarding how this issue directly effects his industry.

Drew Campbell:

Right-to-Repair in the Auto Industry

Automobile owners today have a wide and diverse range of repair options available to them when deciding on where to service their vehicle. This includes the ability to seek repairs within an authorized dealer network, at a national chain repairer, at an independent shop, or even conduct a repair themselves if technically inclined. When compared to any other consumer product, the repair options available for today's automobile are unmatched. In fact, it is estimated that over 70% of all post-warranty work is completed outside an automaker's authorized dealer network. That is the very definition of consumer choice. This competitive marketplace is possible because automakers make available all the information necessary to service, diagnose and repair a vehicle. Beyond just repair information, parts and tooling are broadly available either directly from an automaker or from a host of third-party manufacturers. The FTC's Nixing the Fix report released in May 2021 recognizes the auto industry's forward leaning approach to Right-to-Repair. - "For any manufacturing sector interested in creating a self-regulatory mechanism for expanding repair options, the experience of the automobile industry provides some guidance. In January 2014, two car manufacturer

trade groups and two trade groups representing independent repair shops and manufacturers of aftermarket parts entered into a Memorandum of Understanding (“MOU”) that had the effect of creating a broad, if not complete, right to repair in the automotive industry across the United States.¹ o This MOU contains a mechanism for obtaining any information one believes is missing. This process has never been formally triggered, a testament to the fact that all the repair documentation or instruction necessary to conduct a repair is available. o In addition, the association and our members have worked with service technicians over the years to support and facilitate education for repairing vehicles. - “While the car manufacturing industry has taken important steps to expand consumer choice, other industries that impose restrictions on repairs have not followed suit.”² - “Providing individuals and independent repair shops with the diagnostic software to fix devices and with firmware patches is fully consistent with Commission staff’s 2015 Internet of Things report and its subsequent Start with Security guidance. Manufacturers can provide others with access to the same parts and tools that they provide to their authorized service providers. And, by providing such access to individuals and independent repair shops, manufacturers would have greater confidence in the repair activities that occur outside of their authorized networks.”³ 1 P. 45 2 P. 6 3 P. 31 o This passage, from the report’s section on cybersecurity risks, appears to validate the approach currently in place across the auto industry. - In a recent Washington Post OpEd focused on the Biden Administration’s Executive Order on Competitiveness, a leading advocate for the broader Right to Repair movement, which targets all other digital products available for sale, confirmed that the auto industry is distinct from other products and the leader in this space. He stated: o “In some sectors, notably the

automotive industry, independent repair shops are thriving. The ability of individuals and third-party shops to obtain the same electronic-diagnostic information available to dealers was codified in a 2013 Massachusetts law (initiated by referendum in 2012); auto manufacturers agreed to abide by that rule nationwide to avoid a potential patchwork of legislation varying by states. Thanks to that agreement, you have the choice to get your car fixed at a local shop or at the dealership. Nationwide, independent mechanics perform about 70 percent of all automotive repairs. That competition keeps prices reasonable while also stabilizing car insurance rates.” o “Software-based diagnosis can seem daunting. But the problems it identifies are often within the ability of the ordinary consumer to fix. The other day, for example, the check-engine light went on in my Toyota Highlander Hybrid. I plugged in a \$30 scanner and Googled the error code. The Internet said that my cylinder-two misfire error could be easily fixed with a new \$9 spark plug. Sure enough, popping in a new part fixed the issue. Without the ability to decode that error, I would have been stuck paying a lot more to have a dealership diagnose the problem with a proprietary tool”



September 21, 2022

House Committee on Rules
H-312, The Capitol
Washington, D.C. 20515

Re: Hearing on Right to Repair: Legislative and Budgetary Solutions to Unfair Restrictions on Repair

Dear Chairman McGovern and Ranking Member Cole,

Public Knowledge is a consumer advocacy organization which advocates for a fair, equitable copyright system. We thank you for holding hearings on the right to repair, an issue that affects not only consumers, but also farmers, small businesses, and the disability community, among countless others.

We would like to draw your attention to an unexpected impediment to small businesses, farmers, and consumers seeking a right to repair: copyright law. Section 1201 of the Digital Millennium Copyright Act makes it illegal to “circumvent a technological measure” (also known as a digital lock) that protects a copyrighted work. Manufacturers often use this provision to prevent Americans from repairing devices they rightfully own by placing digital locks on the embedded software that is so common in modern appliances, farm equipment, and other consumer devices. These locks limit the repairability of devices since fixing a broken item often requires access to the protected code to remove old parts or install new ones. This forces small business owners, farmers, and consumers to either buy new devices or pay for expensive official repair services that may cost more than buying a new device.

Although Section 1201 allows the Copyright Office to issue exemptions to this rule, such exemptions are temporary. Every three years, someone must petition the Copyright Office through a complicated multi-year rulemaking process for a renewed right to repair exemption. This process is burdensome to farmers, small businesses, and consumers who simply want to fix the things they own. Even the Copyright Office has asked Congress to eliminate this burden by creating a permanent exemption for the right to repair.

Moreover, even with an exemption, procuring or selling the tools to enable circumventing a lock still remains illegal under Section 1201. This means that Americans who wish to repair their devices must figure out how to circumvent a complicated digital lock without any assistance. A feat that even the most technologically savvy can find difficult.

There are several ways Congress can fix the barrier that Section 1201 has against the right to repair. The first, and most desirable, action Congress can take is to repeal section 1201—eliminating both its ban on circumventing a digital lock and selling circumvention tools. Alternatively, Congress could pass a specific, permanent exemption that would allow Americans to circumvent digital locks for the purposes of repair, and allow the production, selling, and acquisition of tools to unlock devices to perform repairs.

Thank you for your consideration,

/s/ Kathleen Burke
Policy Counsel

/s/ Meredith Rose
Senior Policy Counsel

Public Knowledge



TESTIMONY OF ROB LAREW

**President
National Farmers Union**

**SUBMITTED TO THE U.S. HOUSE COMMITTEE ON RULES
SUBCOMMITTEE ON LEGISLATIVE AND BUDGET PROCESS**

"Right to Repair: Legislative and Budgetary Solutions to Unfair Restrictions on Repair"

**September 21, 2022
H-312, The Capitol
Washington, D.C.**

Chairman Morelle, Ranking Member Burgess, and members of the committee:

On behalf of the more than 200,000 family farm and ranch families of National Farmers Union (NFU), we write to thank you for holding a hearing to investigate the issue of Right to Repair. Farmers are heavily reliant on equipment such as tractors, combines, and other tools to do their jobs. The digitization of these technologies has benefited farmers, but it has also resulted in significant repair headaches and reduced options for repair due to the restrictions imposed by manufacturers. Paired with consolidation in authorized equipment dealership networks, farmers have fewer repair options, and report facing higher costs and longer wait times for repair.

NFU's *Fairness for Farmers* Campaign and "Right to Repair"

NFU is fighting for "Fairness for Farmers"¹ to address decades of industry consolidation in agriculture that has led to excessive costs for farm inputs, supply chain vulnerabilities, and the devastation of our communities. Another symptom of this consolidation is increased equipment costs and reduced repair operations for farm machinery. NFU's grassroots, member driven policy supports "Fair Repair and Right to Repair legislation that would allow farmers and independent mechanics access to diagnostic software, information, and other tools to repair modern equipment."²

Why "Right to Repair" matters to farmers and rural communities

With the increasing incorporation of advanced technology into production agriculture where repair of that technology is restricted, it has become increasingly difficult for farmers and ranchers to fix their own equipment, hurting the bottom lines of both producers and local non-dealer-certified repair shops. Major farm equipment manufacturers restrict repairs by requiring certain software and software tools to make repairs to their tractors and by refusing to make these tools available to farmers or independent mechanics.³

Without access to the software and information needed to fix modern equipment, farmers rely on dealership technicians for many repairs. That can lead to service delays, putting a farmer's crop and livelihood at risk by impinging on their ability to operate during tight planting or

¹ Learn more about NFU's *Fairness for Farmers* campaign at <https://nfu.org/fairness-for-farmers/>

² National Farmers Union, *Policy of the National Farmers Union*, (March 2022).

³ Some manufacturers have made limited tools, such as John Deere's Customer Service ADVISOR, available for public purchase. These tools, however, have limited use—they do not provide information required to diagnose all problems with a tractor, nor do they enable a farmer to digitally approve all repairs once they have been made. Farmers still need to turn to the dealership for many repairs.

harvesting windows. Farmers Union members have also told us they have been facing higher repair costs, a major challenge for farmers who often operate on razor-thin margins.⁴ Of the 74 farmers we surveyed, 92 percent believe they could reduce their costs if they had better access to independent repair or could make all repairs themselves.⁵

A trend of dealership consolidation is exacerbating the problems farmers face accessing repair.⁶ Our members are feeling the effect of this: 65% of respondents to our survey report having access to fewer dealerships than they did five years ago.⁷ John Deere, which controls more than 50 percent of the large tractor market, has the most consolidated dealerships. As a result, there is one John Deere dealership chain for every 12,018 farms and every 5.3 million acres of American farmland.⁸

This consolidation not only hurts farmers, it also impacts small rural businesses that sell and repair agricultural equipment. Independent repair shops cannot complete all repairs without access to repair software tools and information, meaning they cannot fully compete with manufacturer-branded dealerships and their technicians. These factors make it more difficult for these kinds of small business owners to provide needed services to their rural communities and help maintain the vibrancy of rural small towns.

“Right to Repair” and Policy Solutions in Agriculture

NFU appreciates Chairman Morelle’s leadership in seeking solutions to the problem of repair restrictions by introducing the *Fair Repair Act* (H.R.4006), a bill that NFU endorsed (along with its Senate companion S.3830); NFU also endorsed the *Agricultural Right to Repair Act* (S.3549). These bills would provide farmers, consumers, and independent mechanics, access to parts, software tools, and documentation – on fair and reasonable terms – to complete repairs, and directs the Federal Trade Commission to enforce these provisions. The bills also preserve the

⁴ An independent technician told *Reuters* he often gets calls from former customers that complain of being overcharged as much as \$10,000 for repairs. Repair restrictions can prevent independent technicians from providing competitive services. See <https://www.reuters.com/markets/us/fewer-us-tractor-dealerships-raise-costs-farmers-sector-consolidates-2022-09-01/>

⁵ Kevin O’Reilly; “Why Farmers Need Right to Repair”; *U.S. PIRG Education Fund and National Farmers Union Report*; January 2022. Available at <https://pirg.org/edfund/resources/why-farmers-need-right-to-repair/>

⁶ Bianca Flowers; “Fewer U.S. tractor dealerships raise costs for farmers as sector consolidates”; *Reuters*; 1 September 2022. Available at <https://www.reuters.com/markets/us/fewer-us-tractor-dealerships-raise-costs-farmers-sector-consolidates-2022-09-01/>

⁷ Kevin O’Reilly; “Deere in the Headlights II”; *U.S. PIRG Report*; February 2022. Available at <https://pirg.org/resources/deere-in-the-headlights-ii-2/>

⁸ *Ibid.*

manufacturers' intellectual property. We urge members of the committee to review these bills and to work with the bill sponsors to advance this legislation.

NFU was pleased when the Federal Trade Commission (FTC) released a policy statement in July 2021 that it planned to ramp up law enforcement against illegal repair restrictions, and more should be done to enforce existing law.⁹ NFU, along with several state Farmers Union divisions and other organizations, filed a complaint with the FTC alleging that "John Deere withholds from its customers diagnostic software and other information necessary to repair the Deere equipment they own."¹⁰ Furthermore, the complaint alleges that this withholding violates the Sherman Act and constitutes an unfair and deceptive trade practice.

NFU is hopeful that the FTC will take strong action to address the complaint. But current laws relevant to the issue of repair restrictions are not strong enough. These laws include the Magnuson-Moss Warranty Act, antitrust laws (for example, when repair restrictions constitute tying arrangements or monopolistic practices that violate the Sherman Act), and relevant prohibitions under Section 5 of the Federal Trade Commission Act. Thus, legislative solutions, like the *Fair Repair Act* and the *Agricultural Right to Repair Act*, may be needed to bolster existing law.

Conclusion

Thank you again for holding this hearing, and for the opportunity to share the views and experiences of NFU and its members with the committee. We welcome the opportunity to speak with the committee more about the need to protect farmers and rural businesses from repair restrictions, and to work together to craft solutions.

⁹ "FTC to Ramp Up Law Enforcement Against Illegal Repair Restrictions," July 21, 2021. <https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-ramp-law-enforcement-against-illegal-repair-restrictions>

¹⁰ "Complaint requesting investigation and action to enjoin unfair methods of competition and trade practices by Deere & Company," March 3, 2022, *Fairmark Partners, LLP*. https://drive.google.com/file/d/1h6HVLfQ491dyAhcdYM-w5v_FpVKmtOB3/view.



September 21, 2022

The Honorable Joe Morelle
 Chairman
 Subcommittee on Legislative and Budget Process
 House Committee on Rules
 H-312, The Capitol
 Washington, D.C. 20515

The Honorable Michael Burgess
 Ranking Member
 Subcommittee on Legislative and Budget Process
 House Committee on Rules
 H-152, The Capitol
 Washington, D.C. 20515

Dear Chairman Morelle and Ranking Member Burgess,

As the singular, authoritative, and respected voice of the automotive industry, the Alliance for Automotive Innovation (“Auto Innovators”) welcomes the opportunity to provide the Subcommittee with its perspective on the importance of right-to-repair to our companies, their customers, and automotive repair in the U.S.

Focused on creating a safe, clean, and transformative path for personal mobility, Auto Innovators represents the manufacturers that produce nearly 97 percent of cars and light trucks sold in the U.S., in addition to original equipment suppliers, technology companies, and others value-chain members within the automotive ecosystem. As the nation’s largest manufacturing sector, the automotive industry is responsible for nearly 10 million U.S. jobs and represents 5.5 percent of the country’s gross domestic product.

Competition is alive and well in the automotive repair industry. Consumers have a wide range of options on where to seek service or repair; these include a dealer repair facility, a national chain repairer, an independent repair facility, or individual vehicle owners undertake the repair themselves if technologically inclined. Independent repair facilities currently perform the vast majority of diagnostic and repair work. In fact, over 70 percent of out-of-warranty repair work is performed outside of an automaker’s authorized dealer network. This is the very definition of consumer choice.

This well-established, competitive marketplace exists because automakers make all the information and tools necessary to diagnose and repair vehicles available to the independent repair community. This commitment was codified as the 2013 Massachusetts Automotive Right to Repair law, which guaranteed independent repair facilities access to the same information and tools needed to diagnose and repair vehicles that are provided to auto dealers, while respecting consumer privacy and maintaining cybersecurity. In 2014, representatives from the auto industry and the independent repair industry then came together to craft a national memorandum of understanding (MOU) memorializing automaker commitments to follow the Massachusetts law across the entire country. That MOU remains in place today and is working well. In fact, the automotive MOU has been cited by the Federal Trade Commission in their 2021 Nix the Fix report (Report) as an ideal model for other industries to follow when looking to ensure consumer repair options. Specifically, the Report states the automotive MOU

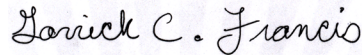
Page 2

“...had the effect of creating a broad, if not complete, right to repair in the automotive industry across the United States.”¹

The existing MOU also had the foresight to recognize automotive industry is constantly evolving, and consciously futureproofed the law. For example, as vehicles become more connected, certain categories of vehicle data may be accessible via telematic data systems. The national MOU contemplated this evolution of the industry and explicitly requires that automakers make telematics information available to independent repairers and vehicle owners if that information is needed to repair a vehicle, available to an automaker’s authorized dealer network, and not otherwise available through another source. Likewise – foreseeing the industry-defining shift toward electric vehicles – the MOU does not discriminate based on powertrain. Regardless of whether a vehicle is powered by an internal combustion engine or an electric motor, automakers are committed to the obligations laid out in the national MOU.

Auto Innovators appreciates the Subcommittee’s attention to this important issue. We look forward to continued engagement with the Subcommittee and your congressional colleagues to ensure that the experience and continued success of the auto industry in right-to-repair serves as a positive example in this ongoing dialogue.

Sincerely,



Garrick Francis
Vice President, Federal Affairs
Alliance for Automotive Innovation

¹ Federal Trade Commission, *Nixing the Fix: An FTC Report to Congress on Repair Restrictions* (May 2021), available at https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf, p. 45.



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September 26, 2022

The Honorable James McGovern, Chairman
House Committee on Rules
Subcommittee on Legislative and Budget Process
The Capitol, H-312
Washington, DC 20515

Chairman McGovern:

The Auto Care Association is a national trade association that represents over 4.5 million professionals employed by 536,000 businesses that manufacture, distribute, and sell motor vehicle parts, accessories, services, tools, equipment, materials, and supplies throughout the United States.

On behalf of our members independent repair facilities and consumers, we respectfully submit comments for the record for the *Right to Repair: Legislative and Budgetary Solutions to Unfair Restrictions on Repair* hearing, to ensure consumer choice, competition, lower costs, and the fundamental right for consumers to repair their vehicles.

Right to Repair is a universal issue across multiple industries and congressional action should seek to remedy the problem for vehicle owners as well as computer, agricultural products, and cell phone repair. Right to Repair can be compared to using your bank card and being able to withdraw cash from a competing bank's machine. Consumers have access to their money no matter what bank they use. The same should apply to auto repair as consumers should be able to take their vehicle to any repair shop they choose.

With the advances in automotive technology, some have likened modern vehicles to computers on wheels. From semiconductor chips to embedded software, late-model premium vehicles have more than one hundred million lines of software code, more than an F-22 Raptor fighter jet. This software executes on 70-100 micro-processor based electronic control units (ECU) networked throughout the body of the vehicle.

The Federal Trade Commission released the *Nix the Fix Report* in May 2021 that cited barriers to repairs including physical restrictions, unavailability of parts, manuals, and diagnostic software/ tools. The report also cited how steering consumers to manufacturers' repair networks using telematics systems was also a major obstacle. Additionally, the report also cited that Congressional interest in the competition and consumer protection aspects of repair restrictions is timely as many consumer products have become harder to fix and maintain. Repairs today often require specialized tools, difficult-to-obtain parts, and access to proprietary diagnostic software. Consumers whose products break then have limited repair choices.

The Right to Repair movement is accelerating with close to sixty state legislative measures introduced across the country this past year. Coupled with several federal legislative initiatives, various regulatory proposals, and multiple legal disputes over access to parts, repair information, software, tools, and equipment, we urge the committee to consider vehicle repair as it debates the central issue of third-party maintenance for consumer products.

Right to Repair levels the playing field and promotes small business. It allows innovation to drive new products and services while improving reliability and safety. It promotes state-of-the-art technologies and creates new jobs. We strongly urge you to create a strong framework across multiple industries and give consumers access and control of repair for their consumer products, including automotive repair.

Thank you for the opportunity to share comments on this important issue. We are happy to assist the committee and/or serve as a resource as Congress debates these critical consumer protection measures. Please do not hesitate to reach out if you have additional questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Lisa Foshee". The signature is written in a cursive, flowing style.

Lisa Foshee

Senior Vice President Government and General Counsel



September 19, 2022

The Honorable James P. McGovern
Chair, House Rules Committee
370 Cannon House Office Building

The Honorable Tom Cole
Ranking Member, House Rules Committee
2207 Rayburn House Office Building

The Honorable Joseph D. Morelle
Chair, Legislative and Budget Process Subcommittee
1317 Longworth House Office Building

The Honorable Michael C. Burgess
Ranking Member, Legislative and Budget Process Subcommittee
2161 Rayburn House Office Building

Statement for the Record from the Digital Right to Repair Coalition

Repair, Reuse, and Recycling:

Fixing things is a normal part of the useful life of products – high tech or low tech. Without the option of repair, high-tech things are particularly difficult to keep in use. Unlike metal or wood objects, it's not practical for any of us to build circuit boards in our basements or barns. We're

stuck with needing help from the manufacturer even when the manufacturer does not want to help.

Our members are determined to make sure that we can fix our stuff or go out of business. Some of our members repair products under warranty as subcontractors to manufacturers. Some manage provision of parts and tools on behalf of manufacturers and independents. Others manage processing of new but returned merchandise for retailers. These same providers for manufacturers services also offer repair services directly to business and consumers – using the same skills for which they are already qualified.

Since every gadget becomes a used gadget from the moment it leaves the showroom floor – the need for repair continues long beyond the expiration of any warranties – which are commonly one year or less. Since manufacturers are not fundamentally in the business of repair, they will provide only those services which suit their business models. If fixing things is in the way of selling replacements, fixing will be limited or impossible.

The option of fixing also helps end-of-life processors wring the last bit of value out of otherwise “obsolete” products. Older machines are stripped for parts and those parts are valuable to anyone that has an old machine for which new parts are no longer available. We have members still supporting equipment that hasn’t been made in more than 20 years – and they rely heavily on finding and fixing old parts for continued use.

Recyclers are increasingly challenged by a lack of schematic diagrams necessary not just to find parts of value, but to remove hazardous materials prior to processing. Tiny lithium-ion batteries in household trash can carry enough of an explosive charge to cause devastating fires. One of the key requirements of Right to Repair legislation is the provision of this information directly to consumers and independents so that it can also be shared with recyclers.

Legislative Goals:

Our legislative intent as a Coalition is to restore the option of competition to the business of repair. Without competition, manufacturers entirely control the lifecycle of products to their advantage. We should not expect otherwise. The business model of monopolized repair is very lucrative, so we expect conflict with such businesses. The intended consequences are to restore a free market for repair as a separate business from manufacturing. If consumers choose – they can also do their own work.

As with any other monopoly – repair monopolies allow prices to rise to the point where a new purchase makes sense. Consumer Reports advises that if a repair costs more than 50% of the price of a replacement – consumers should buy the replacement. Good practical advice and horrible at the same time. Manufacturers will always price repairs to drive new purchases unless they have competition. Should a TV repair cost \$500? Possibly there is a small part that could be replaced by a local business charging \$50. We don’t know because the option doesn’t exist.

When manufacturers control the availability and location of repair services, these locations will highly favor wealthy areas and not poor ones. After all – retailers, dealerships and authorized locations are really extensions of the manufacturer with the goal of selling more products. Independent repair technicians make their living by supporting the consumer first. Without independent repair options, there is no free market keeping manufacturer options honest.

Everyone with a modern gadget knows there is a problem with getting things fixed. We estimate that roughly 90% of the modern products on the market today are already repair-monopolized. Meaning that everyone buying such products must deal with the manufacturer (and their franchise or authorized extensions) exclusively.

We cannot simply avoid repair monopolies through smarter purchasing. That option ended a generation ago. Many industries are now entirely repair-monopolized and lack any competitive choices entirely. Some trade groups operate as cartels and share not only policies, but funding for opposition lobbying. Just because one brand or another may offer more favorable terms, there is no requirement that they continue to do so. Lacking statute – policy changes can be made overnight. We should have consistent laws protecting us from monopolization of repair.

Converged Problems of High-Tech Repair:

Many of our membership are high-tech people and see the world through the lens of computing. We see many formerly low-tech industries converging into high-tech industries without the decades of experience learned in how hardware products are sold and supported separately from software products. Computers integrated into cars, tractors and TVs aren't different because of the software applications they run. Marketing claims of "tightly integrated" or "super-sophisticated" are just smoke and mirrors to us.

When a physical thing has a failed connection or a failed part – those connections must be restored before any creative applications or content will run. A broken disk drive will not store data. A broken network connection will not communicate with the internet. A broken power adapter will not power the item. Physical repair has no intersection with "IP" because "IP" comes later.

Opposition has proven adept at obfuscating important differences between various types of software to insinuate potential conflicts with intellectual property that do not exist. Copyrights are not infringed by repair. Copyright law already accommodates a wide range of repair needs other than fixing computer gaming equipment. Patents are infringed by rogue manufacturers, not repairers. Cyber security secrets or trade secrets are never distributed in repair materials for the obvious reason that distributing secrets is the opposite of keeping a secret.

Legal Foundation of "Right to Repair":

Fixing things is a separate business from manufacturing. Fixing things never harms the manufacturer since they have already been paid in full for all their investments and innovations in the first sale. Manufacturers turn over all responsibility for use to the buyer at the point of

purchase Most of the opposition to Right to Repair legislation is based on flawed assumptions about these relationships.

We already have laws that might have protected us from repair monopolies had they been challenged twenty years ago. Under antitrust law, manufacturers are not allowed to require buyers of the first product to be compelled to buy a subsequent purchase (such as a repair service) as a condition of use. There are actions underway in Court challenging the use of “tying agreements” against John Deere, as an example. However, litigation is a one-brand-at-a-time endeavor. We need a simpler and more consistent solution with legislation.

Is it also illegal under statutes governing Unfair and Deceptive Acts and Practices’ law (“UDAP”) for manufacturers to sell things using contracts that cannot be negotiated by the consumer. Most, if not all, contracts governing the sale of equipment using high-tech features are riddled with contract terms and conditions that are not possible for an ordinary consumer to understand, are often unavailable entirely to preview pre-purchase, and these same contracts hide the revision of essential rights of ownership deceptively.

The Federal Trade Commission is tasked with consumer protection in the same manner as states. As a follow up to the non-partisan Nixing the Fix Workshop of 2019 and report to Congress of 2021, the arguments made by manufacturers in defense of repair monopolies have been “scant” to non-existent. Repairing things is not how consumers hurt themselves, not how they lose their data, not how they become additionally vulnerable to hackers. Repair information is already legal to use, does not interfere with any copyrights, patents, or trade secrets. The only intended consequence is to make sure that manufacturers cannot be the only source of repair.

Impacts:

Without being able to fix our stuff, we are all forced to throw away, buy new, or do without. Throwing away is why we have a growing e-waste problem. Buying new is impractical for all but the very wealthy. Doing without is the reason we have a digital divide.

Without fixing, our used markets fail as well. People don’t buy broken things unless they know they can be fixed at a reasonable price. Every gadget or gizmo that cannot be fixed loses almost all value in the used market – down to a floor set by raw materials value. Many people expect tech gadgets to carry high values of precious metals – but this is a flawed assumption. The average cell phone includes less than \$2 in raw materials, but that same phone might be worth \$400 as a functional device.

Used equipment values are very important to how people and businesses invest in equipment. Businesses use the value of their purchases as part of their borrowing base. When capitalized products have no value as working machines – that changes how investors view the business. Banks and leasing companies don’t like to lend against assets that have artificial limits in the used market such as requirements for approval of physical or license transfers. Businesses

cannot "sweat" their assets if they cannot be kept in use. Everyone is hurt by repair monopolies.

About the Digital Right to Repair Coalition:

Ours is a membership controlled 501 C 6 Trade Association representing businesses and consumer interests in the secondary market for technology products.

Our over 400 member associations and individual businesses variously buy, sell, repair, refurbish, reconfigure, and recycle technology enabled products regardless of industry. We are the people that do the work keeping our technology up and running. We are proudly non-partisan and free of any manufacturer influence. We stand firmly on the side of consumers as users of technology that have slowly been losing control of their purchases in unfair and deceptive ways.

Thank you for your attention. Please let me know if you have any questions or if I can be of service.

Sincerely,

Gay Gordon-Byrne

Executive Director, Digital Right to Repair Coalition at repair.org

gbyrne@repair.org

518-251-2837 (office)

201-747-4022 (mobile)



September 20, 2022

The Honorable Joe Morelle
 Chairman
 Subcommittee on Legislative and Budget Process
 Committee on Rules
 U.S. House of Representatives
 Washington, D.C. 20510

The Honorable Michael Burgess
 Ranking Member
 Subcommittee on Legislative and Budget Process
 Committee on Rules
 U.S. House of Representatives
 Washington, D.C. 20510

Dear Chairman Morelle and Ranking Member Burgess:

The Automotive Aftermarket Suppliers Association (AASA) is a division of the Motor & Equipment Manufacturers Association that represents aftermarket suppliers which manufacture motor vehicle parts, components, and systems for use in the vehicle aftermarket industries. Aftermarket suppliers ensure that quality parts and service choices are available to the 281 million vehicles on our nation's roads. Suppliers are the foundation of a vibrant aftermarket industry, which employs more than 4 million Americans across manufacturers, motor vehicle repair facilities, and distribution and services providers. Furthermore, the independent aftermarket currently services around 70 percent of motor vehicle repairs in the United States.

On behalf of this industry, we respectfully share our views on "Right to Repair: Legislative and Budgetary Solutions to Unfair Restrictions on Repair." We applaud the Subcommittee for holding this hearing to examine these critical issues.

As vehicle technology continues to advance and vehicle systems become more automated, new barriers to the competitive auto repair market are emerging. federal and state policies, including cybersecurity and privacy provisions, must not inherently limit a consumer's choice in where, how, and with what parts to repair their vehicles. The automotive aftermarket industry is committed to ensuring safe, affordable, and accessible vehicle service, maintenance, and repair for consumers. Without action by either federal or state legislatures, we are concerned that vehicle original equipment manufacturers and their dealer networks will have a monopoly, preventing consumer choice. A lack of competition in the aftermarket could increase the costs to consumers, limit interoperability and advancement, and impact consumer safety.

The aftermarket industry seeks policy solutions that will allow competition to continue in the aftermarket. Vehicle manufacturers have historically shared with Congress that providing access to vehicle data with the independent aftermarket would create a vehicle safety and cybersecurity risk. Currently, both dealer service bays and independent aftermarket repair shops use real-time, bidirectional data to repair and maintain vehicles. This bi-directional interaction with the vehicle is used to diagnose and test vehicle systems requiring repair and to turn off dashboard warning lights that indicate that something on the vehicle needs attention after the repair is complete. Aftermarket repair shops are already facing difficulties accessing some vehicles' data, requiring the consumer to make unnecessary choices. These choices can include visiting the dealer to perform a repair, ignoring the light, or, even worse, deactivating the warning light entirely. Each of these choices has a downside

for the consumer, from increased costs for the dealer visit to environmental impacts and safety risks from unperformed repair and maintenance.

New technologies are creating technological barriers that can impair the ability of a motor vehicle owner and their chosen vehicle repairer to diagnose, repair, and maintain their vehicles. Additionally, federal and state requirements have not been updated to take into consideration emerging technological barriers. Taken together, technological and legal barriers could eliminate consumer choice and a competitive market.

Allowing the independent aftermarket access to vehicle data for repair, service, and maintenance needs can be done in a safe, cybersecure, and controlled manner that will not put the motoring public at risk. MEMA supports policies that would allow the vehicle original equipment manufacturer (OEM) to utilize cryptographic or technological protections as long as the aftermarket industry continues to have the same ability to diagnose, repair, and maintain a motor vehicle in the same manner as any motor vehicle manufacturer or motor vehicle dealer.

Preventing the aftermarket from having access to vehicle data will remove the choice consumers can now make to repair and maintain their vehicle by relying on the independent aftermarket. In a competitive market, consumers prefer independent service providers over OEM dealers by a ratio of 70 percent to 30 percent; a split that has persisted for decades. An independent study conducted by a firm that works with both automakers and the aftermarket estimated that if repair restrictions were not addressed, that share would drop to 56 percent by 2035 and continue to decline in the future.¹ By locking independent service providers out of the market, repair restrictions artificially distort consumers' natural preference for more cost-effective independent maintenance and repair services and implement monopoly pricing.

The independent aftermarket can continue to be trusted partners in repairing, maintaining and servicing Americans' cars and trucks. The aftermarket can ensure safety, cybersecurity and privacy. We have repaired electronics, software, & safety systems – effectively – for decades. We have dealt with private, security data – such as key codes giving access to vehicles - in an effective, cooperative way with automakers – for decades. The aftermarket has well-established training and certification systems in the industry. As many technology leaders among our members can attest, the technology solutions are available to ensure both cybersecurity and vehicle repair.

In the recent *Cybersecurity Best Practices for the Safety of Modern Vehicles*², the National Highway Traffic Safety Administration (NHTSA) recognizes the need for a balance between third party serviceability and vehicle cybersecurity. NHTSA states, "cybersecurity should not become a reason to justify limiting serviceability. Similarly, serviceability should not limit strong cybersecurity controls."

AASA welcomes the opportunity to constructively engage with stakeholders on how to best protect consumers financially and against potential cyber-threats, how to secure the intellectual property of the OEMs and the original equipment suppliers who developed much of the systems and components that are subject to this debate, and how to preserve the competition within the aftermarket that provided consumers a choice in how to maintain a vehicle for decades.

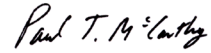
¹ Roland Berger. "The U.S. Automotive Aftermarket in 2035." May 1, 2022.

² National Highway Traffic Safety Administration. *Cybersecurity Best Practices for the Safety of Modern Vehicles*. September 2022.

AASA Letter to Rules on Right to Repair
September 20, 2022 Page 3 of 3

AASA is available to discuss this with the Committee and would like to reach a solution that is acceptable to all parties. Should you have questions or concerns, please contact Catherine Boland, vice president, legislative affairs at cboland@mema.org or 301-509-2791.

Sincerely,



Paul McCarthy
President and Chief Operating Officer



Chris Netram

*Managing Vice President,
Tax and Domestic Economic Policy*

September 21, 2022

The Honorable Jim McGovern
Chairman
Committee on Rules
U.S. House of Representatives
Washington, DC 20515

The Honorable Tom Cole
Ranking Member
Committee on Rules
U.S. House of Representatives
Washington, DC 20515

Dear Chairman McGovern and Ranking Member Cole:

The National Association of Manufacturers appreciates the Rules Committee convening today to examine policies that could impact the free market and manufacturing growth.

The NAM is the largest manufacturing association in the United States, representing 14,000 manufacturers of all sizes, in every industry sector and across all 50 states. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs for the women and men who make things in America.

Manufacturers have serious concerns with recent efforts to impose unnecessary and misguided restrictions on manufacturers in the name of so-called "Right to Repair." Calls for a new "right" to repair imply that consumers and purchasers do not *currently have* the ability to fully repair and maintain their equipment. Yet consumers across the agriculture, automobile, consumer electronics, medical device and industrial sectors can already access the information, tools and parts necessary to repair virtually any malfunction with a piece of equipment they own. In short, Right to Repair is a misguided and overly broad solution in search of a problem that simply does not exist.


Manufacturers provide a wide range of resources that enable consumers and third-party repair businesses to maintain, diagnose and repair their products. These include manuals, product guides, product service trainings, diagnostics tools and more. Allowing unrestricted access to the software and coding embedded inside machinery would not bolster purchasers' ability to repair their own equipment given the resources currently available. Rather, over-broad Right to Repair regulations could create a new right to *modify*, potentially endangering consumers and allowing for modifications that undermine government-mandated safety and emissions limits. Further, new such policies could give competitors—both in the U.S. and abroad—unimpeded access to manufacturers' intellectual property, severely undermining U.S. competitiveness and free market innovation.

Critically, manufacturers have incorporated safeguards mandated by Congress and regulators into their products. Allowing consumers to bypass these safeguards could lead to violations of the Clean Air Act, which authorizes EPA limits on emissions attributable to the operation and use of equipment and machinery. Consumer modifications of these limits would expose manufacturers to potential legal liability and increase emissions associated with operating equipment and machinery in a wide range of industrial sectors. Right to Repair could also allow for the modification of critical safety measures, leading to equipment malfunctions and threats to consumer safety. Moreover, the access required to make these modifications would undermine manufacturers' intellectual property rights by forcing them to publicly expose competitive and proprietary information.

Smart regulation is critical to protecting worker and consumer safety, public health and our environment, while overregulation in the form of unnecessary and counterproductive Right to Repair restrictions will hold back our country's economic potential. Manufacturers are committed to commonsense legal and regulatory standards that ensure public health and safety, including the safeguards currently in place to protect workers and consumers. Implementing new repair restrictions could potentially disrupt these safeguards and endanger public health and safety.

The NAM respectfully encourages Congress to carefully consider the ramifications of any Right to Repair legislation. These policies could undermine manufacturers' intellectual property rights while endangering public health and worker and consumer safety. The NAM looks forward to working with Congress on policies that promote a fair, open and competitive marketplace and bolster pro-competitive actions by manufacturers across the country to support to job creation, investment in research and development, and economies of scale across the manufacturing economy.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Netram". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Chris Netram
Managing Vice President, Tax and Domestic Economic Policy

Nathan Proctor

Nathan leads U.S. PIRG's Right to Repair campaign, working to pass legislation that will prevent companies from blocking consumers' ability to fix their own electronics. Nathan lives in Arlington, Massachusetts, with his wife and two children.

Truth in Testimony Disclosure Form

In accordance with Rule XI, clause 2(g)(5)* of the *Rules of the House of Representatives*, witnesses are asked to disclose the following information. Please complete this form electronically by filling in the provided blanks.

Committee: Rules

Subcommittee: Legislative and Budget Process

Hearing Date: 09/21/2022

Hearing Title :

Right to Repair: Legislative and Budgetary Solutions to Unfair Restrictions on Repair

Witness Name: Nathan Proctor

Position/Title: Senior Campaign Director, Right to Repair

Witness Type: Governmental Non-governmental

Are you representing yourself or an organization? Self Organization

If you are representing an organization, please list what entity or entities you are representing:

U.S. PIRG (Public Interest Research Group).

FOR WITNESSES APPEARING IN A NON-GOVERNMENTAL CAPACITY

Please complete the following fields. If necessary, attach additional sheet(s) to provide more information.

Are you a fiduciary—including, but not limited to, a director, officer, advisor, or resident agent—of any organization or entity that has an interest in the subject matter of the hearing? If so, please list the name of the organization(s) or entities.

No.

Please list any federal grants or contracts (including subgrants or subcontracts) related to the hearing's subject matter that you or the organization(s) you represent have received in the past thirty-six months from the date of the hearing. Include the source and amount of each grant or contract.

None

Please list any contracts, grants, or payments originating with a foreign government and related to the hearing's subject that you or the organization(s) you represent have received in the past thirty-six months from the date of the hearing. Include the amount and country of origin of each contract or payment.

None

Please complete the following fields. If necessary, attach additional sheet(s) to provide more information.

- I have attached a written statement of proposed testimony.
- I have attached my curriculum vitae or biography.

* Rule XI, clause 2(g)(5), of the U.S. House of Representatives provides:

(5)(A) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof.

(B) In the case of a witness appearing in a non-governmental capacity, a written statement of proposed testimony shall include— (i) a curriculum vitae; (ii) a disclosure of any Federal grants or contracts, or contracts, grants, or payments originating with a foreign government, received during the past 36 months by the witness or by an entity represented by the witness and related to the subject matter of the hearing; and (iii) a disclosure of whether the witness is a fiduciary (including, but not limited to, a director, officer, advisor, or resident agent) of any organization or entity that has an interest in the subject matter of the hearing.

(C) The disclosure referred to in subdivision (B)(ii) shall include— (i) the amount and source of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) related to the subject matter of the hearing; and (ii) the amount and country of origin of any payment or contract related to the subject matter of the hearing originating with a foreign government.

(D) Such statements, with appropriate redactions to protect the privacy or security of the witness, shall be made publicly available in electronic form 24 hours before the witness appears to the extent practicable, but not later than one day after the witness appears.

Sandeep Vaheesan is the legal director at the Open Markets Institute (OMI). He leads OMI's legal advocacy and research work, including its amicus program.

Vaheesan works on a range of antimonopoly topics, such as antitrust law's role in structuring labor markets and promoting fair competition. From 2015 to 2018, he served as a regulations counsel at the Consumer Financial Protection Bureau, where he helped develop rules on payday and title lending and debt collection practices. Before that, he worked at the American Antitrust Institute.

Vaheesan's writing has appeared in many publications, including the Atlantic, Harvard Business Review, New York Times, Washington Post, William & Mary Law Review Online, and Yale Law Journal Forum. He has a forthcoming book entitled *Democracy in Power* (under contract with the University of Chicago Press) on the history of cooperative and public power in the United States and the lessons it offers for building a clean, democratically accountable electric power industry.

Truth in Testimony Disclosure Form

In accordance with Rule XI, clause 2(g)(5)* of the *Rules of the House of Representatives*, witnesses are asked to disclose the following information. Please complete this form electronically by filling in the provided blanks.

Committee: Rules

Subcommittee: Legislative and Budget Process

Hearing Date: 09/21/2022

Hearing Title :

Right to Repair: Legislative and Budgetary Solutions to Unfair Restrictions on Repair

Witness Name: Sandeep Vaheesan

Position/Title: Legal Director

Witness Type: Governmental Non-governmental

Are you representing yourself or an organization? Self Organization

If you are representing an organization, please list what entity or entities you are representing:

Open Markets Institute

FOR WITNESSES APPEARING IN A NON-GOVERNMENTAL CAPACITY

Please complete the following fields. If necessary, attach additional sheet(s) to provide more information.

Are you a fiduciary—including, but not limited to, a director, officer, advisor, or resident agent—of any organization or entity that has an interest in the subject matter of the hearing? If so, please list the name of the organization(s) or entities.

Please list any federal grants or contracts (including subgrants or subcontracts) related to the hearing's subject matter that you or the organization(s) you represent have received in the past thirty-six months from the date of the hearing. Include the source and amount of each grant or contract.

Please list any contracts, grants, or payments originating with a foreign government and related to the hearing's subject that you or the organization(s) you represent have received in the past thirty-six months from the date of the hearing. Include the amount and country of origin of each contract or payment.

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Lauren Williams- New York Farm Bureau

Lauren Williams is the Associate Director of National Affairs at New York Farm Bureau, which is the largest general farm and agricultural organization in New York State. New York Farm Bureau's policy positions are based on member-led discussions and represent the diversity of New York's agriculture industry.

In her role at NYFB, Ms. Williams is responsible for directing and coordinating NYFB's federal advocacy efforts including working with New York's Congressional delegation and federal agencies on a wide range of farm and agricultural legislative and regulatory issues.

Ms. Williams grew up on her family's dairy farm in Pennsylvania, and continues to be involved in the agricultural industry today.

Truth in Testimony Disclosure Form

In accordance with Rule XI, clause 2(g)(5)* of the *Rules of the House of Representatives*, witnesses are asked to disclose the following information. Please complete this form electronically by filling in the provided blanks.

Committee: Rules

Subcommittee: Legislative and Budget Process

Hearing Date: 09/21/2022

Hearing Title :

Right to Repair: Legislative and Budgetary Solutions to Unfair Restrictions on Repair

Witness Name: Lauren Williams

Position/Title: Sr. Associate Director of National Affairs

Witness Type: Governmental Non-governmental

Are you representing yourself or an organization? Self Organization

If you are representing an organization, please list what entity or entities you are representing:

New York Farm Bureau

FOR WITNESSES APPEARING IN A NON-GOVERNMENTAL CAPACITY

Please complete the following fields. If necessary, attach additional sheet(s) to provide more information.

Are you a fiduciary—including, but not limited to, a director, officer, advisor, or resident agent—of any organization or entity that has an interest in the subject matter of the hearing? If so, please list the name of the organization(s) or entities.

N/A

Please list any federal grants or contracts (including subgrants or subcontracts) related to the hearing's subject matter that you or the organization(s) you represent have received in the past thirty-six months from the date of the hearing. Include the source and amount of each grant or contract.

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N/A

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