

# **Rollover Safety Coalition**

*Supporting Motor Vehicle Safety and Preserving Access to Justice*

Dear Member of Congress,

The groups below support lifesaving and cost-effective improvements in motor vehicle safety and work to preserve the constitutional right of citizens to a trial by jury. Recent developments in rulemakings by the National Highway Traffic Safety Administration (NHTSA), within the Department of Transportation (DOT), threaten both of these important objectives.

In several notices issued in August 2005, NHTSA indicated an opinion that its proposal for a new federal minimum safety standard should be interpreted, when issued, as preempting state common law tort liability in those areas. Traditionally, abridgment of state tort law protections has only occurred where Congress expressly states it is so or in the case of a direct and specific conflict with federal objectives. In contrast, on the basis of vaguely formulated suppositions, NHTSA's August 2005 assertion of preemption would, by agency fiat, preempt civil justice laws in all 50 states. This would constitute an unprecedented incursion upon the states, upon Congress, and upon the constitutional rights of ordinary citizens, who will remain uncompensated for the needless deaths and injuries that occur due to the foreseeable negligence of manufacturers.

In developing its rulemaking, NHTSA also failed to consult state policymakers before promulgating the Notice of Proposed Rulemaking, as it is bound to do under Executive Order 13132. This rulemaking clearly impacts states, given the preemption language.

One of NHTSA's August 2005 rulemakings would effectuate a minor upgrade in roof crush resistance, a key factor in the survivability of rollover crashes. Rollover crashes kill 10,000 people per year on the highway. After 34 years of inaction and tens of thousands of deaths, the National Highway Traffic Safety Administration's (NHTSA's) proposed "upgrade" to the roof crush standard is so weak that 70 percent of vehicles already meet it. NHTSA forecasts the inadequacy of its rule by estimating that its proposal will save only 13 to 44 lives annually. Yet, with troubling disregard for its own mission to promote improvements in vehicle safety, the agency contends that bare compliance with this inadequate minimum standard should bar the courthouse door to victims and their families seeking compensation for injuries caused by roof crush.

The agency's preemption position, if accepted by the courts, would reduce or eliminate manufacturer incentives to exceed the minimum standard and deny consumers any protection from unsafe designs that nonetheless satisfy a basic compliance test. The history of the unsafe early air bag designs, which complied with federal standards but nonetheless seriously injured or killed children and small-statured women, requiring Congressional action to mandate use of advanced air bags, should more than disprove the idea that mere compliance with a federal performance standard ensures that manufacturers will produce a safe design.

In contrast, tort law establishes a duty of care that protects citizens when the government is too slow to act, when federal minimum standards are grossly insufficient or outdated or when standards are not well enforced. Rather than trying to restrict the constitutional rights of citizens to a trial by jury, NHTSA should reduce the number of lawsuits in a far more ethical way – by issuing meaningful, lifesaving improvements in vehicle safety.

Sincerely,

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