

Congress of the United States
Washington, DC 20515

January 23, 2024

Ms. Sophie Shulman
Deputy Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Deputy Administrator Shulman:

We write to express our deep concern with the National Highway Traffic Safety Administration's (NHTSA) proposed Corporate Average Fuel Economy (CAFE) standards for passenger cars and light trucks,¹ which represent yet another attempt by this Administration to use the rulemaking process to impose its climate agenda on American families. NHTSA's proposed standards, when coupled with the Environmental Protection Agency's (EPA) distinct, extreme tailpipe emissions proposal,² amount to a de facto mandate for electric vehicles (EVs) that threatens to raise costs and restrict consumer choice, harm U.S. businesses, degrade our energy and national security and hand the keys of our automotive industry over to our adversaries, especially China. Therefore, we strongly urge NHTSA to withdraw its misguided proposal, go back to the drawing board and reissue new CAFE standards that comply with the law, rather than ones that seek to pick winners and losers in the free market and remake our country's economy.

Nowhere in law did Congress authorize NHTSA to set fuel economy standards that effectively mandate EVs while at the same time force the internal combustion engine out of the market. In fact, federal statute expressly prohibits NHTSA from considering the fuel economy of EVs when determining maximum feasible CAFE standards for passenger cars and trucks.³ Despite this clear statutory limitation, which NHTSA acknowledged in its proposal, NHTSA accounted for EVs in its regulatory baseline and factored that baseline into its determination of the maximum achievable CAFE standards. In doing so, NHTSA created standards that simply cannot be met by vehicles that use liquid fuels alone, but only through the mass production of EVs. Therefore, NHTSA's proposal does not meet the statutory requirements of the CAFE program. The proposal also likely runs afoul of the major questions doctrine as laid out in *West*

¹ "Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks for Model Years 2027-2032 and Fuel Efficiency Standards for Heavy-Duty Pickup Trucks and Vans for Model Years 2030-2035." *Federal Register* (88 FR 56128), August 17, 2023. <https://www.federalregister.gov/documents/2023/08/17/2023-16515/corporate-average-fuel-economy-standards-for-passenger-cars-and-light-trucks-for-model-years>.

² "Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles," *Federal Register* (88 FR 29184), May 5, 2023, <https://www.federalregister.gov/documents/2023/05/05/2023-07974/multi-pollutant-emissions-standards-for-model-years-2027-and-later-light-duty-and-medium-duty>.

³ 49 USC 32902(h)(1) prohibits the Secretary of Transportation from considering the fuel economy of "dedicated automobiles," which include EVs, when deciding the "maximum feasible average fuel economy of passenger automobiles."

Virginia v. EPA,⁴ given it lacks any “clear congressional authorization,” likely does not reach the standard of “economic practicability” as required by the statute and would surely have major political and economic significance if ever finalized.

Rather than following EPA with a market-distorting EV mandate, NHTSA should put forth market-driven standards that promote competition among a variety of technologies to ensure the availability of vehicles that contain a mix of all the attributes consumers typically desire, including efficiency. NHTSA’s inappropriate, EV-focused approach will limit availability of and access to vehicle and fuel options that would better meet consumer preferences and needs and accomplish statutory objectives, while still reducing greenhouse gas emissions (GHG) in the transportation sector. While EVs do not emit at the tailpipe, they still have a carbon footprint due to emissions associated with mineral processing, battery manufacturing, generation of electric power, battery recycling and final disposal. Therefore, a realistic, technology-neutral approach that takes into consideration the full lifecycle emissions of both the vehicle and the fuel would more effectively address GHG emissions while preserving consumer choice and allowing the market to work independently.

NHTSA’s out-of-touch de facto EV mandate ignores the reality that most Americans still prefer the internal combustion engine vehicle, and the fact there is a lack of consumer demand for EVs.⁵ Major U.S. automakers have recently lowered their targets and pulled back planned investments in EVs due to low consumer demand and struggling EV units.⁶ They have also announced that jobs will be lost at U.S. plants.⁷ Furthermore, automobile dealers across the country have said that EVs continue to sit unpurchased on dealership lots, despite automakers accepting massive losses and unsustainable government incentives.⁸ The low consumer demand for EVs can likely be attributed to the various unappealing aspects of these vehicles, including the typically higher sticker prices and insurance premiums, shorter average driving ranges, lower resale value, inadequate battery technologies for severe cold weather and lack of operational charging infrastructure, particularly for drivers in rural areas.⁹ EVs are not a practical option for most Americans.

We are further concerned that NHTSA’s proposed standards, by all accounts, appear unrealistic and unachievable, and will increase costs for both industry and consumers. NHTSA has said it believes the standards will require an average fleet-wide fuel economy of 58 miles per gallon by 2032 for compliance.¹⁰ The estimated average fuel economy for model year 2022

⁴ In *West Virginia v. EPA*, 142 S. Ct. 2587 (2022), the Court cemented the “major questions doctrine,” which requires that an agency point to a “clear congressional authorization” for claiming authority from statute to justify regulations that would have “vast economic and political significance.”

⁵ Alison Spencer, Sephanie Ross and Alec Tyson, “How Americans view electric vehicles,” Pew Research Center, July 13, 2023, <https://www.pewresearch.org/short-reads/2023/07/13/how-americans-view-electric-vehicles/>.

⁶ Paul Lienert and Nathan Gomes, “Ford Again Warns on EV Results, Withdraws 2023 Forecast,” Reuters, October 27, 2023, <https://www.reuters.com/business/autos-transportation/ford-withdraws-2023-forecast-warns-ev-results-2023-10-26/>.

⁷ Dumas, Breck. “Stellantis to Lay off Thousands at Jeep Plants, Blames California Emissions Regulations.” Fox Business, December 8, 2023. <https://www.foxbusiness.com/politics/stellantis-lay-off-thousands-jeep-plants-blames-california-emissions-regulations>.

⁸ Keith Laing, “Car Dealers Press Biden to Ease Push toward EV Mandates,” Bloomberg.com, November 28, 2023, <https://www.bloomberg.com/news/articles/2023-11-28/car-dealers-press-biden-to-ease-push-toward-electric-vehicle-mandates?leadSource=verify+wall>.

⁹ Sean McLain, “Automakers Have Big Hopes for EVs; Buyers Aren’t Cooperating.” The Wall Street Journal, October 15, 2023. <https://www.wsj.com/business/autos/electric-vehicle-buyer-interest-67b407cb>.

¹⁰ “Corporate Fuel Economy Standards.”

vehicles was just 26.4 miles per gallon.¹¹ This means that automakers would have to more than double fuel efficiency by 2032 or face exorbitant regulatory penalties for non-compliance. According to the Alliance for Automotive Innovation, automakers will pay more than \$14 billion in non-compliance penalties between 2027 and 2032 under NHTSA’s proposal, affecting one in every two light trucks, and one in every three passenger cars.¹² For perspective, in the entire history of the CAFE program, automakers have paid less than \$1.5 billion in civil penalties for light-duty fleets.¹³ Automakers have also correctly pointed out that NHTSA’s proposed standards that foresee coercive penalties work against our economy, since the money spent on civil penalties could instead be spent on research and innovation.¹⁴

The increased costs to manufacturers will ultimately be passed along to the consumer. Industry projects that new vehicle prices will increase by an average of \$3,000 over today’s prices under NHTSA’s proposal.¹⁵ These price increases would be even greater were it not for all the taxes Americans are paying for the various government subsidies for EVs.¹⁶ NHTSA even acknowledged that its proposed standards will result in higher upfront vehicle costs for consumers and that “net benefits for passenger cars remain negative” (*i.e.*, in no scenario do the sum of offsetting benefits outweigh the enormous costs imposed on the economy) across all approaches considered.¹⁷ Ignoring this reality harms consumers because the average price of an EV remains substantially higher than that of a gas-powered vehicle, even with taxpayer-funded handouts, and the average household income for an EV owner is over \$100,000, which equates to about only 31 percent of U.S. households.¹⁸ In other words, NHTSA’s rule would disproportionately burden those who can least afford it by creating a vehicle market with unnecessarily expensive and limited options.

Lastly, NHTSA’s de facto mandate for EVs would harm our energy and national security, while simultaneously benefitting our number one foreign adversary: China. Our already vulnerable power grid would not be able to handle the additional strain from the dramatic increase in electricity consumption associated with mass adoption of EVs—especially if this Administration continues its efforts to shut down the very baseload power sources that would be required for such a transition. Even if our grid could handle the added strain, we do not currently have the domestic supply chains to support such a manufacturing feat, and would be heavily reliant on China for critical minerals and other materials needed for EVs. China produces about 75 percent of all lithium-ion batteries, and has 70 percent of production capacity for cathodes and

¹¹ Office of Transportation and Air Quality, “Highlights of the Automotive Trends Report,” Environmental Protection Agency, 31 October 2023, <https://www.epa.gov/automotive-trends/highlights-automotive-trends-report>.

¹² David Shepardson, “Automakers Say They Face \$14 Billion in Fines from Biden’s ‘Unfeasible’ Fuel Rules,” Reuters, September 29, 2023, <https://www.reuters.com/business/autos-transportation/automakers-warn-biden-vehicle-rules-not-feasible-could-cost-14-bln-fines-2023-09-29/>.

¹³ Thomas Catenacci, “Biden Admin Faces Pressure to Drop Electric Vehicle Mandate Regulations: ‘This Is Alarming,’” Fox News, October 18, 2023, <https://www.foxnews.com/politics/biden-admin-faces-pressure-drop-electric-vehicle-mandate-regulations-alarmining>.

¹⁴ Catenacci, “Biden Admin Faces Pressure.”

¹⁵ Shepardson, “Automakers Say They Face \$14 Billion.”

¹⁶ Thomas Catenacci, “New Report Unmasks True Costs of Electric Vehicle Mandates: ‘Remain More Expensive.’” Fox News, October 25, 2023, <https://www.foxnews.com/politics/new-report-unmasks-true-costs-electric-vehicle-mandates-remain-expensive>.

¹⁷ “Corporate Fuel Economy Standards.”

¹⁸ Phil Rossetti, Ashley Nunes, and George David Banks, “Weighing Transportation Alternatives for Reducing Emissions – Light Duty Vehicles,” CRES Forum, October 23, 2023, <https://cresforum.org/publications/weighing-transportation-alternatives-for-reducing-emissions-light-duty-vehicles/>.

85 percent for anodes, the key components of the battery.¹⁹ China also controls more than 50 percent of the processing and refining capacity for lithium, cobalt and graphite, all critical minerals vital for the production of EV batteries—which are the main part of the vehicle.²⁰ Meanwhile, the Biden Administration continues to block critical mining projects, further creating a dependency on China for EV batteries. It is also worth noting that China’s economy is far more carbon-intensive than the U.S., which means any potential future reduction in emissions from EVs would likely be negated by China’s plan to continue increasing its emissions through 2030,²¹ coupled with virtually non-existent environmental protections across its economy, including EV battery production.

In summary, NHTSA must stop its attempt to regulate gas-powered vehicles out of the market and force EVs onto buyers. Instead, NHTSA should put forward standards that preserve Americans’ freedom to choose a vehicle that best meets their needs. The proposal issued in July is mere virtue signaling for this Administration’s extreme climate agenda, but it would actually have only limited impact on emissions while strengthening foreign adversaries and harming American workers and consumers. We strongly urge NHTSA to drop its attempt at central planning and instead put forth a workable proposal that complies with the law and better serves the American people.

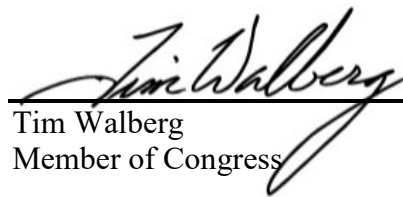
Sincerely,



Mike Crapo
United States Senator



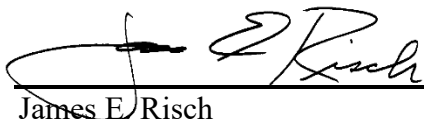
Ted Cruz
United States Senator



Tim Walberg
Member of Congress



Mitch McConnell
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James E. Risch
United States Senator



John Boozman
United States Senator

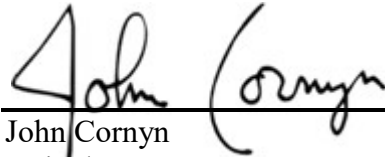
¹⁹ “Global Supply Chains of EV Batteries – Analysis,” International Energy Agency, July 2022, <https://www.iea.org/reports/global-supply-chains-of-ev-batteries>.

²⁰ “Global Supply Chains of EV Batteries – Analysis.”

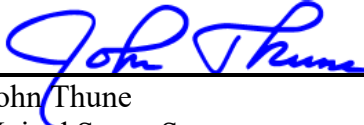
²¹ Dvorak, Phred, and Sha Hua. “China Resists Climate Pressure from West, but Makes Gains on Its Own.” The Wall Street Journal, November 9, 2022. <https://www.wsj.com/articles/china-resists-climate-pressure-from-west-but-makes-gains-on-its-own-11667963510>.



Pete Ricketts
United States Senator



John Cornyn
United States Senator



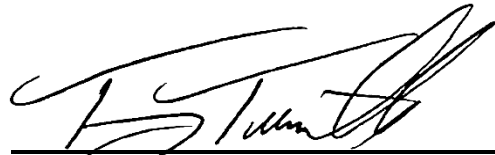
John Thune
United States Senator



Kevin Cramer
United States Senator



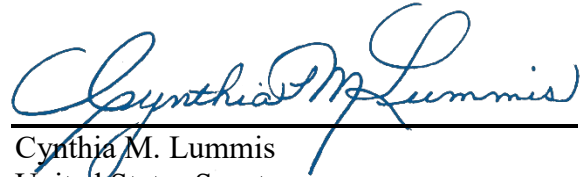
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Tommy Tuberville
United States Senator



Thom Tillis
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Cynthia M. Lummis
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Mike Braun
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Tom Cotton
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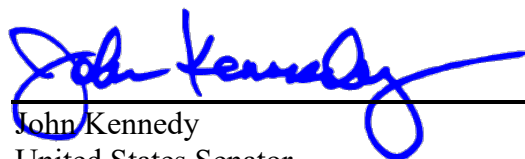
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Dan Sullivan
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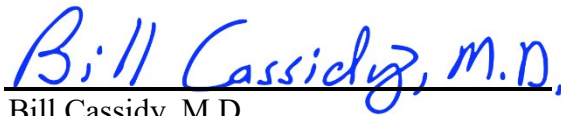
Ted Budd
United States Senator



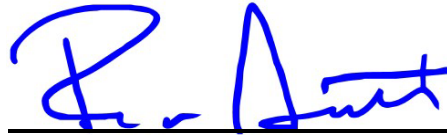
James Lankford
United States Senator



Markwayne Mullin
United States Senator



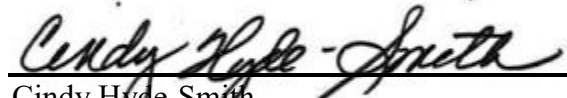
Bill Cassidy, M.D.
United States Senator



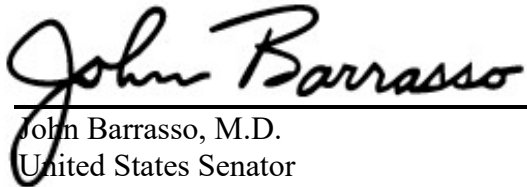
Rick Scott
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Michael S. Lee
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Cindy Hyde-Smith
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United States Senator



Deb Fischer
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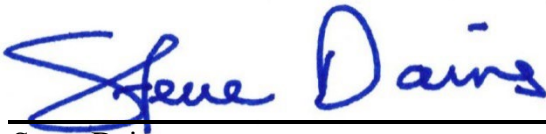
Katie Boyd Britt
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Mitt Romney
United States Senator



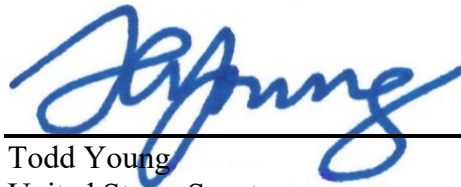
M. Michael Rounds
United States Senator



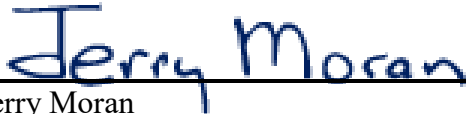
Steve Daines
United States Senator



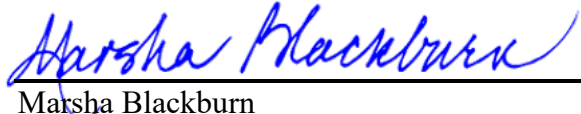
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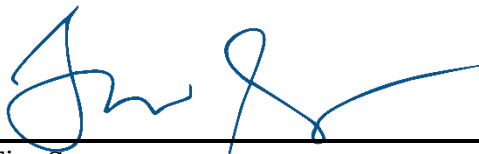
Todd Young
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Jerry Moran
United States Senator



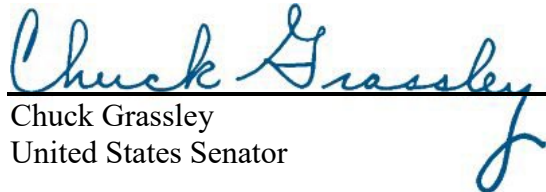
Marsha Blackburn
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Chuck Grassley
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Marco Rubio
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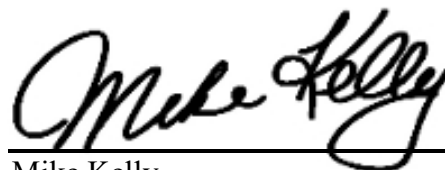
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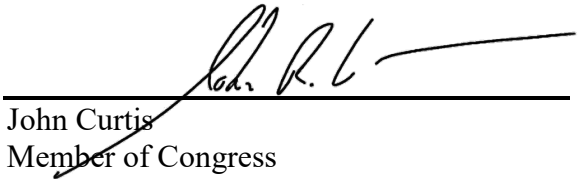
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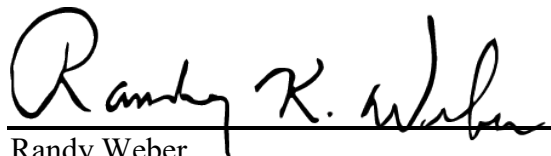
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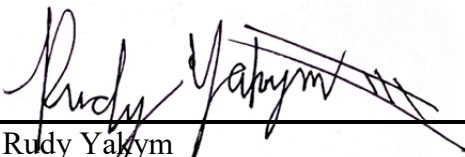
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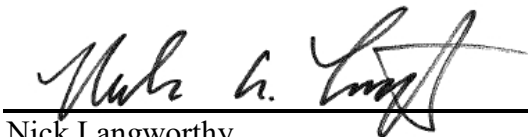
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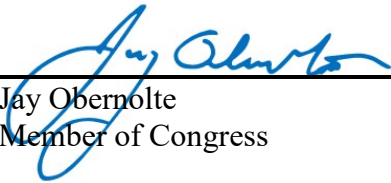
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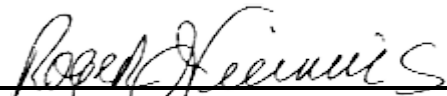
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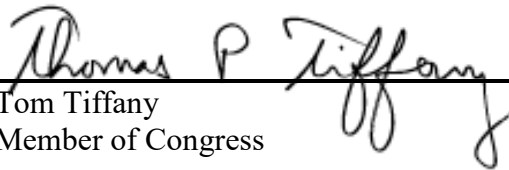
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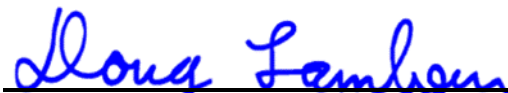
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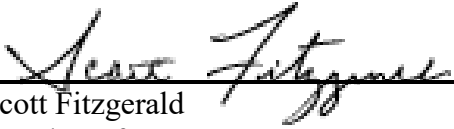
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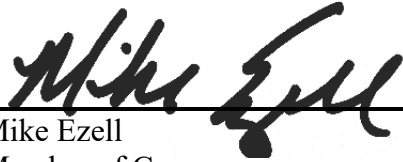
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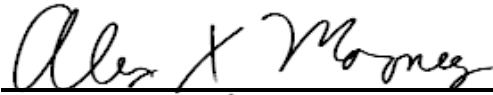
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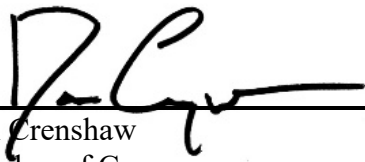
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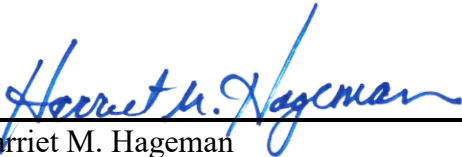
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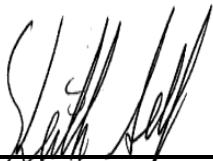
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Harriet M. Hageman
Member of Congress



Charles Fleischmann
Member of Congress



Keith Self
Member of Congress



Ryan Zinke
Member of Congress



Mike Bost
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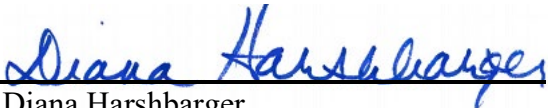
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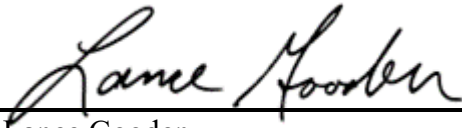
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Tracey Mann
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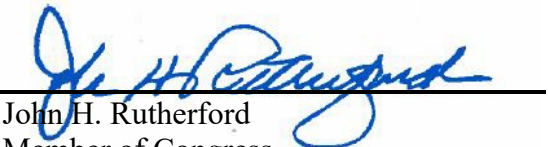
Lance Gooden
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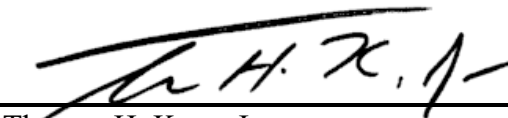
Robert E. Latta
Member of Congress



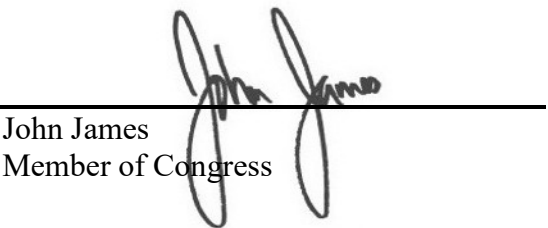
Derrick Van Orden
Member of Congress



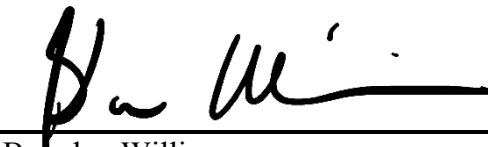
John H. Rutherford
Member of Congress



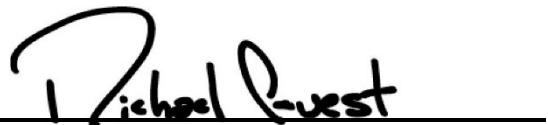
Thomas H. Kean, Jr.
Member of Congress



John James
Member of Congress



Brandon Williams
Member of Congress



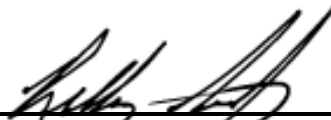
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