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April 30, 2014

To: NIADA  
From: Federal Advocates  
Subject: April Monthly Report

NOTE: Congress was in recess from April 11-28

### **Annual Privacy Notice Requirement**

NIADA has been monitoring legislation currently pending in the Congress – namely, House-passed H.R. 749, the “Eliminate Privacy Notice Confusion Act” and Senate introduced S. 635, the “Privacy Notice Modernization Act of 2013 – that would, in general, eliminate a costly and duplicative requirement originally passed under the Gramm-Leach-Bliley Act that all financial institutions mail their customers a copy of their privacy notice each year even if there has been no change in their privacy policy. While NIADA supports both bills in concept, our preference is for enactment of House-passed H.R. 749 given some concerns over the one addition to that bill that is included in the Senate bill.

Both bills would remove the annual privacy notice requirement if an institution has not, in any way, changed its privacy policies or procedures. The bills do not exempt any institution from an initial privacy notice, nor do they allow a loophole for an institution to avoid issuing an updated notice. Notwithstanding this, the Senate bill adds another qualifying condition for exemption - that customers be provided “access to such most recent disclosure in electronic or other form permitted by regulations prescribed under section 504.” By this addition, we suspect that the Senate bill envisions that financial institutions would post their privacy policy on their website or transmit it via email. However, while that may work for “traditional financial institutions,” some of our small dealers do not have websites and email transmittals by them may be costly, cumbersome and speculative at best. Of course, email transmittal assumes that the customer has the capability to receive them that may not always be the case. In addition, the reference to “section 504” creates a significant degree of uncertainty as that section, in part, gives the Bureau of Consumer Financial Protection and the Federal Trade Commission broad authority to issue regulations on an on-going basis, thereby, for purposes of this bill, leaving in doubt what “other form permitted by regulations” might take. Given this, the Association’s position is that

subparagraph (3) of the S. 635 not be included in the final version of the bill.

On April 23, we met with staffs of the House and Senate Banking Committee to discuss the bills, expressing NIADA's support and raising questions about the Senate "add-on language." As a result, it was decided that the Association would submit a formal comment letter (see attached).

### **MAP-21 Reauthorization: The Congress**

MAP-21 expires on September 30, 2014. Congress and the transportation industry have gotten used to the fact that surface transportation authorization bills are rarely passed on time and a series of short-term policy extensions are usually required. However, this time, simply extending the authorizing language will not be enough because the Highway Trust Fund will not have sufficient funds to pay for the extensions. As early as August, the Trust Fund, particularly the Highway account, is expected to be insolvent. Therefore, Congress must decide not only what policy provisions to include in the next reauthorization bill, they must decide how to find new revenue to fund the bill. There is strong support from industry for a gas tax increase (the easiest and quickest revenue raiser), including from a number of stakeholders who might be expected to oppose an increase, such as the American Trucking Associations and the US Chamber of Commerce. However, Congress does not appear to have the will to take on such a politically charged issue prior to the November mid-term elections, if ever. As a result, Congress will have to pass some sort of short-term funding bill, most likely before it leaves for the August recess. While there are a number of possible revenue sources other than raising the gas tax, such as the currently popular option of amending the tax code to encourage repatriating corporate overseas profits, it is unlikely that they could be approved and implemented in time. Therefore, yet another General Fund transfer is likely. Estimates are that approximately \$10B would be needed to be transferred from the General Fund just to provide sufficient revenue through the end of the calendar year - on top of \$53B previously transferred over the past few years. The most likely opportunity for Congress to possibly consider a gas tax increase or other long-term revenue options may be the post-election Lame Duck session of Congress when Members no longer feel as politically vulnerable.

The latest estimate is that the highway account of the Trust Fund will reach its minimum balance by August 29 and the transit account by September 26. In anticipation, a number of state DOTs have already announced that they are starting to slow down procurements.

This situation presents a serious problem for the House and Senate transportation authorizing committees. While they have jurisdiction over drafting a multi-year MAP-21 reauthorization bill and any required short-term policy and program extensions, they do not have authority over increasing or finding new Trust Fund revenues. That falls to the Senate Finance Committee and the House Ways & Means Committee, neither of which have indicated how or when they intend to deal with the looming funding crisis.

Despite not knowing how much money they have to spend on existing, much less, new programs, the House and Senate authorizing committees are moving forward with drafting multi-year reauthorization bills. The Senate appears to be leaning towards writing a bill with few major policy changes or additions, other than perhaps a more expansive freight title. They feel

that although MAP-21 only authorized two years of funding, it essentially made six-years' worth of policy changes and reforms, many of which have not yet been implemented or tested. Last week, the "Big 4" bipartisan leadership of the Senate Environment & Public Works (EPW) Committee, chaired by Senator Barbara Boxer (D-CA), which has jurisdiction over the highway program, held a press conference to announce their joint reauthorization principles:

- Passing a long-term bill, as opposed to a short-term patch;
- Maintaining the formulas for existing core programs;
- Promoting fiscal responsibility by keeping current FY'14 levels of funding, plus inflation;
- Focusing on policies that expand opportunities for rural areas;
- Continuing efforts to leverage local resources to accelerate the construction of transportation projects, create jobs, and spur economic growth; and,
- Requiring better information sharing regarding federal grants

The EPW leaders stated that they hope to act on their bill in early May. They also indicated that they will encourage the Banking Committee (which has jurisdiction over transit programs) and the Commerce Committee (which has jurisdiction over highway safety programs) to act on their portions of the overall bill as soon as possible so that action can move to the Senate Finance Committee.

In the House, Transportation & Infrastructure (T&I) Committee Chairman Bill Shuster (R-PA) has indicated he wants to write a more expansive reauthorization bill, including a variety of new policy initiatives especially in the freight area. He continues to state that the House will pass a reauthorization bill on time, but has not outlined a specific schedule.

On April 8, the Panel on Public-Private Partnerships of the House Committee on Transportation and Infrastructure, chaired by Congressman Duncan (R-TN) held a hearing on "The International Experience with Public-Private Partnerships." Witnesses were Congressman John Delaney (D-MD); Dr. Larry Blain, Chairman of the Board of Directors, Partnerships British Columbia; David Morley, Vice President, Business and Government Strategy, Infrastructure Ontario; Cherian George, Managing Director – Americas, Global Infrastructure & Project Finance, Fitch Ratings; and, Dr. Matti Siemiatycki, Associate Professor, Geography and Program in Planning, University of Toronto.

Across the world there have been thousands of public-private partnerships (P3s) in public infrastructure. There are many models that can be classified as P3s. The simplest form includes contracting with the private sector to complete a single aspect of an infrastructure project; on the other end of the continuum, the private sector designs, builds, finances, operates, and maintains the infrastructure project. P3s have been a tool used by governments to deliver needed public infrastructure for centuries. Canals, ferries, rail, water systems, and roads have been built privately in exchange for tariff or toll-raising authority or government paid capacity-based revenue streams to private entities. Between 2008 and 2013, governments around the world signed approximately 158 P3 agreements, with a total project value of \$160 billion. Most of these agreements represent the design, build, finance, and operate model, which has been limited in the United States compared to other countries. Only 15 of the 158 P3s were in the United States.

## **President's Proposed MAP-21 Reauthorization Bill**

U.S. Transportation Secretary Foxx yesterday unveiled a long-term transportation bill the Administration is sending to Congress for consideration as the House and Senate face looming deadlines to avoid the economic uncertainty and job loss that would ensue if the Highway Trust Fund runs out of money this summer. The GROW AMERICA Act reflects President Obama's vision for a four-year surface transportation reauthorization bill that would create millions of jobs and lay the foundation for long-term competitiveness, rebuilding crumbling roads and bridges while providing much-needed certainty for local and state governments and addressing the country's future needs. The following is an overview of the proposal as prepared by the Department of Transportation.

Specifically, the GROW AMERICA Act will provide --

- \$199 billion to invest in our nation's highway system and road safety. The proposal will increase the amount of highway funds by an average of about 22 percent above FY 2014 enacted levels, emphasizing "Fix-it-First" policies and reforms that prioritize investments for much needed repairs and improvements to the safety of our roads and transit services, with particular attention to investments in rural and tribal areas. The proposal would also provide more than \$7 billion for the National Highway Traffic Safety Administration and Federal Motor Carrier Safety Administration to improve safety for all users of our highways and roads, providing a benefit of \$21 for every Federal dollar used for infrastructure-related safety investments.
- \$72 billion to invest in transit systems and expand transportation options. The proposal increases average transit spending by nearly 70 percent above FY 2014 enacted levels, which will enable the expansion of new projects that improve connectivity (e.g., light rail, street cars, bus rapid transit, etc.) in suburbs, fast-growing cities, small towns, and rural communities, while still maintaining existing transit systems. The GROW AMERICA Act proposes a powerful, \$5.1 billion increase in investments to address public transit's maintenance backlog to reduce bus and rail system breakdowns; create more reliable service; and stop delays that make it harder for all commuters to get to work. The proposal also includes the innovative Rapid Growth Area Transit Program, which would provide \$2 billion over four years to fast growing communities for bus rapid transit and other multimodal solutions to get ahead of the challenges caused by rapid growth.
- Tools and resources to encourage regional coordination and local decisionmaking. The proposal includes policy reforms to incentivize improved regional coordination by Metropolitan Planning Organizations (MPOs), which are local communities' main voice in transportation planning. The GROW AMERICA Act also strengthens local decision making in allocating Federal funding so that local communities can better realize their vision for improved mobility. High-performing large MPOs will be granted control of a larger portion of funds under two federal transportation programs – the Surface Transportation Program (STP) and the Transportation Alternatives Program (TAP) – and

these MPOs will also receive funds through a set aside under the new Fixing and Accelerating Surface Transportation (FAST) program.

The GROW AMERICA Act will expand economic growth, and create jobs and new opportunities for Americans. The President is dedicated to enhancing opportunity for all Americans and US businesses by investing in transportation projects that better connect communities to centers of employment, education, and other critical services. The GROW AMERICA Act will -

- Support ladders of opportunity to the middle class. Today, 45 percent of Americans lack access to public transportation, limiting the options of many Americans to jobs, education and other necessities. The GROW AMERICA Act will provide improved access to safer and less expensive transportation options for millions of Americans in part by investing \$72 billion in public transportation and expanding transportation options for millions of Americans. This proposal includes \$2 billion for an innovative Rapid Growth Area Transit Program to provide new bus rapid transit and other multimodal solutions for rapidly growing regions. The GROW AMERICA Act includes \$245 million for workforce development to enhance the size, diversity, and skills of our Nation's construction and transportation workforce through collaborative partnerships with the U.S. Department of Labor, States, and non-governmental organizations.
- Provide \$10 billion for a multi-modal freight program that strengthens America's exports and trade. The U.S. transportation system moves more than 52 million tons worth nearly \$46 billion each day, or almost 40 tons of freight per person per year, and freight tonnage is expected to increase 62 percent by 2040. The GROW AMERICA Act will help improve the operation of our transportation system to move freight while making critical investments to accommodate this future growth in part through providing \$10 billion over four year to establish a new multimodal freight grant program to fund innovative rail, highway, and port projects that will improve the efficient movement of goods across the country. The GROW AMERICA Act will also give shippers and transportation providers a real seat at the table for making investment decisions and incentivizes States to collaborate and establish longterm freight strategic plans.
- Provide \$19 billion in dedicated funding for rail programs. The proposal also includes nearly \$5 of billion annually for high performance and passenger rail programs with a focus on improving the connections between key regional city pairs and high traffic corridors throughout the country.

The GROW AMERICA Act will provide more bang-for-the-buck through innovative project finance and delivery improvements. In a time of tight fiscal and budgetary constraints, the President's proposal includes a number of measures to ensure that the American public is getting most out of Federal transportation infrastructure investments that lead to better outcomes for all Americans.

The GROW AMERICA Act will --

- Utilize competitive funding to spur innovation. The proposal will provide \$5 billion over four years - an increase of more than 100 percent - for the highly successfully TIGER

competitive grant program and \$4 billion embedded in the highway and transit requests for a competitive grant program called Fixing and Accelerating Surface Transportation (or "FAST"). Modeled after the Department of Education's Race to the Top program, FAST will award States, Tribes, and MPOs that adopt bold, innovative strategies and best practices in transportation that would have long-term impact on all projects across the transportation programs.

- Improve project delivery and the Federal permitting and regulatory review process. The GROW AMERICA Act will build on recent efforts to expedite project approval timelines while delivering better outcomes for communities and the environment. The proposal expands on a series of successful efforts by the Administration to expedite high priority projects and identify best practices to guide future efforts without undermining bedrock environmental laws or public engagement. Not only will important projects break ground faster, but the increased level of transparency and accountability will lead to delivering better environmental outcomes, as the proposal will improve interagency coordination by advancing concurrent, rather than sequential, project reviews and will improve transparency of project reviews and timelines through online "dashboards." It will also increase flexibility for recipients to use Federal transportation funds to support environmental reviews, and help to integrate overlapping requirements.
- Incentivize cost effective investments. The proposal will strengthen the performance incentives to maintain safety and conditions of good repair, and expand research and technology activities in order to improve the productivity of our transportation systems, thereby increasing taxpayer return on investment.
- Provide \$4 billion to attract private investment in transportation infrastructure. The Transportation Infrastructure Finance and Innovation Act (TIFIA) program leverages Federal dollars by facilitating private participation in transportation projects and encouraging innovative financing mechanisms that help advance projects more quickly. The GROW AMERICA Act calls for \$4 billion in funding over four years, which is estimated to support \$40 billion in loans. The GROW America Act will strengthen the Railroad Rehabilitation and Improvement Financing (RRIF) financing Program by reducing the cost of obtaining a loan, making RRIF more accessible to short line and regional railroads. The proposal will raise the cap of Private Activity Bonds (PABs) to \$19 billion, making room for more projects considering a public-private partnership approach to be able to take advantage of this cost-saving tool.

The Administration proposes to fund the GROW AMERICA Act through a pro-growth, business tax reform, without adding to the deficit. The President's Budget outlined a proposal to dedicate \$150 billion in one-time transition revenue from pro-growth business tax reform to address the funding crisis facing surface transportation programs and increase infrastructure investment. This amount is sufficient to not only fill the current funding gap in the Highway Trust Fund, but increase surface transportation investment over current authorized levels by nearly \$90 billion over the next four years. When taking into account existing funding for surface transportation, this plan will result in a total of \$302 billion being invested over four years putting people back to work modernizing our transportation infrastructure. The Administration believes that a comprehensive approach to reforming our business taxes can help create jobs and spur investment, while ensuring a fairer and more equitable tax system that eliminates current loopholes that reward companies for moving profits overseas and allow them to avoid paying

their fair share. The Administration is putting forward this pro-growth financing plan to encourage bipartisan efforts to support a visionary infrastructure plan, but is open to all ideas for how to achieve this important objective, and will work closely with Members of Congress of both parties on a solution that will invest in more job creating transportation projects.

### **Rental Cars Recall**

No additional legislative developments. On July 30, the Senate Commerce Committee reported S. 921, the rental car recall bill without amendment with the understanding that the Committee would continue working with the stakeholders. To review, NIADA sent opposition letters to key Members of the Committee raising various concerns about the bill and advocating for inclusion of the NIADA/NADA amendment. In addition, NIADA surveyed its membership to get a better assessment of member rental car operations and the bills impact. No House bill introduced to date. Last Congress, Congresswoman Capps (D-CA) introduced a companion bill.

### **Auction Sales**

We continue to report on this issue in recognition of its importance and the possibility of congressional action at some point. However, to date there have been no further developments either from the Hill or between the industry and law enforcement.

### **Legislation of Interest**

#### **H.R. 3193, Consumer Financial Protection Safety and Soundness Improvement Act of 2013**

Introduced by Congressman Duffy (R-WI-7) on September 26, 2013, passed the House on Feb. 27, 2014, received in the Senate on March 4, 2014, and amends the Consumer Financial Protection Act to authorize the Chairperson of the Financial Stability Oversight Council to issue a stay of, or set aside, any regulation issued by the Consumer Financial Protection Bureau (CFPB) upon the affirmative vote of the majority of Council members (currently, two-thirds), excluding the Director of the Bureau.

Requires the Council, upon the petition of a member agency of the Council, to set aside a final regulation prescribed by the CFPB if the Council decides that such regulation is inconsistent with the safe and sound operations of U.S. financial institutions. (Currently the Council is merely authorized, upon petition, to set aside a final regulation if it would put the safety and soundness of the U.S. banking system or the stability of the U.S. financial system at risk). Repeals the prohibition against Council set-aside of a regulation after expiration of a specified time period, and mandatory dismissal of a petition if the Council has not issued a decision within such time period. Requires the CFPB Director, when prescribing a rule under federal consumer financial laws, to consider its impact upon the financial safety or soundness of an insured depository institution.

Status Update: No change since the last report.

### **H.R. 2543, End Discriminatory State Taxes for Automobile Renters Act of 2013**

Introduced on June 27 by Congressman Cohen (D-TX) with 6 (now 8) cosponsors. On September 13 the bill was referred to the Subcommittee on Regulatory Reform, Commercial and Antitrust Law of the Judiciary Committee. The bill prohibits states or local governments from levying or collecting a discriminatory tax (generally, a tax or tax assessment that is applicable to the rental of motor vehicles or motor vehicle businesses or property, but not to the majority of other rentals of tangible personal property within a state or locality) on the rental of motor vehicles, motor vehicle rental businesses, or motor vehicle rental property.

Status Update: Two additional cosponsors added since the last report.

### **S. 1585, Providing Replacement Automobiles for Certain Disabled Veterans and Members of the Armed Forces**

Introduced on October 28 by Senator Sanders (I-VT) with no cosponsors. Hearing held by the Committee on Veterans Affairs on October 30. The bill would increase the amount of government assistance from \$18,900 to \$30,000 for military members to acquire a replacement vehicle for vehicles destroyed in disasters, provided that the eligible member does not receive property insurance compensation for the loss..

Status Update: No change since the last report.

### **H.R. 749, Eliminate Privacy Notice Confusion Act**

See discussion above.

### **S.1029, the Regulatory Accountability Act of 2013**

Introduced on May 23 by Senator Portman with 8 cosponsors (now 11) and referred to the Committee on Homeland Security and Governmental Affairs. A Subcommittee hearing was held on the bill on March 11, 2014. The bill amends the Federal regulatory process by specifying issues agency must consider in a rulemaking; various notice requirements for major and high-impact rules; public comment and hearing procedures; judicial review; and, final rulemaking.

Status Update: Two additional cosponsors added since the last report.

### **H.R. 1663, Promoting Automotive Repair, Trade and Sales Act of 2013 (PARTS Act)**

Introduced on April 23 by Congressman Issa (CA-49) on a bipartisan basis with 4 cosponsors and referred on June 14 to the Judiciary Subcommittee of jurisdiction. The bill makes it not an act of infringement, with respect to a design patent that claims a component part of a motor vehicle as originally manufactured, to: (1) make, test, or offer to sell within the United States, or import into the United States, any article of manufacture that is similar or the same in appearance to the component part claimed in such design patent if the purpose of such article is for the repair of a motor vehicle to restore its appearance to as originally manufactured; and (2) use or sell



within the United States any such same or similar articles for such restorations more than 30 months after the claimed component part is first offered for public sale as part of a motor vehicle in any country. Defines "component part" as a component part of the exterior of a motor vehicle only (such as a hood, fender, tail light, side mirror, or quarter panel), excluding an inflatable restraint system or other component part located in the interior of a motor vehicle. Specifies that an offer to sell include any marketing of an article of manufacture to prospective purchasers or users and any pre-sale distribution. Applies this Act to any patent issued, or application filed, before, on, or after the effective date of this Act. Also on April 23 Senator Whitehouse (RI) introduced on a bipartisan basis the identical bill (S.780) with 2 cosponsors. The bill was referred the same day to the Judiciary Committee. NIADA reviewed the legislation and determined at this point not to lend its name in support. We will continue to monitor further developments.

Status Update: No change since the last report.

### **H.R.2414, the Black Box Privacy Protection Act**

On June 18, Congressman Capuano (MA-7) introduced H.R.2414, the Black Box Privacy protection Act with 10 (17) cosponsors. On July 15, the bill was referred to the Homeland Security Committee Subcommittee. The bill amends the Automobile Information Disclosure Act to require manufacturers of new automobiles to disclose on the information label affixed to the window of the automobile: (1) the presence and location of an event data recorder (commonly referred to as a "black box"), (2) the type of information recorded and how such information is recorded, and (3) that the recording may be used in a law enforcement proceeding. Sets forth similar requirements for motorcycle manufacturers. Defines "event data recorder" as any device or means of technology installed in an automobile that records information such as automobile or motorcycle speed, seatbelt use, application of brakes, or other information pertinent to the operation of the automobile or motorcycle. Prohibits the manufacture, sale, offering for sale, or import into the United States of an automobile manufactured after 2015 (bearing a model year of 2016 or later) that is equipped with an event data recorder, unless the consumer can control the recording of information. Requires the event data recorder in an automobile or motorcycle, and any data recorded, be considered the property of the owner of the automobile or motorcycle. Makes the retrieval or downloading of recorded data by any other person unlawful, except: (1) with the owner's consent, (2) in response to a court order, or (3) by a dealer or automotive technician to service the vehicle. Requires certain violations to be treated as unfair or deceptive acts or practices under the Federal Trade Commission Act.

Status Update: No change since the last report.



NATIONAL INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

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April 23, 2014

The Honorable Sherrod Brown Chairman  
Subcommittee on Financial Institutions and  
Consumer Protection  
Committee on Banking, Housing and Urban Affairs  
U.S. Senate  
534 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Blaine Luetkemeyer  
U.S. House of Representatives  
2440 Rayburn House Office Building  
Washington, D.C. 20515

Dear Members of Congress:

On behalf of the National Independent Automobile Dealers Association (NIADA), comprised of over 20,000 members and the only national trade association in the country voicing the concerns and interests of independent automobile dealers within the motor vehicle industry, I am writing to express our strong support for legislation currently pending in the Congress – namely, House-passed H.R. 749, the “Eliminate Privacy Notice Confusion Act” and Senate introduced S. 635, the “Privacy Notice Modernization Act of 2013” – that would, in general, eliminate a costly and duplicative requirement originally passed under the Gramm-Leach-Bliley Act that all financial institutions mail their customers a copy of their privacy notice each year even if there has been no change in their privacy policy.

Current law is extremely burdensome on our members, many of whom are small business auto dealerships with limited financing capability. Every hour that auto dealers and small businesses spend on redundant compliance work is an hour they could spend with customers and potential customers. Helping eliminate the time demands and additional costs of compliance for disclosure of annual, unchanged privacy notices and the managerial expenses for monitoring employees’ compliance, and the printing and postage expenses associated with written disclosures to customers would be immensely helpful to the small business community and our dealers.

NIADA supports both bills in concept as both remove the annual privacy notice requirement if an institution has not, in any way, changed its privacy policies or procedures and do not exempt any institution from an initial privacy notice, nor do they allow a loophole for an institution to avoid issuing an updated notice.

However, our preference for enactment would be the House-passed H.R. 794 version, as we have some concerns over one addition that is included in S. 635. The Senate bill adds another qualifying condition for exemption - that customers be provided "access to such most recent disclosure in electronic or other form permitted by regulations prescribed under section 504." By this addition, we suspect that the Senate bill envisions that financial institutions would post their privacy policy on their website or transmit it via email. While that may work for "traditional financial institutions," it is unknown what kind of impact "electronic disclosure" would have on our smaller dealers who may not have websites or email functionality. Although speculative, this could be a costly and cumbersome investment to comply. Of course, email transmittal assumes that the consumer has the capability to receive them, which may not always be the case.

Additionally, the reference to "section 504" creates a significant degree of uncertainty as that section, in part, gives the Bureau of Consumer Financial Protection and the Federal Trade Commission broad authority to issue regulations on an on-going basis, thereby, for purposes of this bill, leaving in doubt what "other form permitted by regulations" might take. Accordingly, we respectfully request that subparagraph (3) of the S. 635 not be included in the final version of the bill.

Lastly, NIADA wishes to commend both of you for your leadership on this issue. That fact that the bills enjoy broad bi-partisan support in Congress and within the financial services industry, from credit unions and community services to money center banks, is a testament to your good efforts. We look forward to your continued success in advancing this common-sense legislation and should you need anything additional from NIADA in support of your efforts, we are happy and available to be a resource to you on behalf of our independent automobile dealers.

At your service,



Steve Jordan  
Executive Vice President  
NIADA

cc: Jonathan McCracken, LA (Senator Brown)  
Chris Brown, LA (Congressman Luetkemeyer)