

**Testimony offered on behalf of:
Foster F. Wineland Inc.**

**IN OPPOSITION TO:
Proposed Legislation – Digital Right to Repair
Pennsylvania House Commerce Committee
Hearing: March 25, 2024**

Attention: Indira Ridgeway
Executive Director, House Commerce Committee
Via Electronic Mail: IRidgeway@pahouse.net
CC: House Commerce Committee Members

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**Foster F. Wineland Inc. OPPOSES THE APPLICATION OF
PROPOSED RIGHT TO REPAIR LEGISLATION TO THE NONROAD INDUSTRY**

Dear Chairman Conklin and Honorable Members of the House Commerce Committee:

My name is Chris Swindell, and I am the Vice President for Foster F. Wineland Inc. Our dealership has (4) locations across the beautiful Commonwealth of Pennsylvania. We are independently owned and operated, and our business employs 50+ employees. On behalf of Foster F. Wineland Inc., I am here to express our opposition to the inclusion of the nonroad industry to proposed legislation on the topic of “right to repair.” I would like to take this opportunity to express and explain my opposition to this type of legislation as it pertains to our construction and forestry equipment business.

First and foremost, legislation is not necessary for customers to access diagnostics on the equipment sold by our dealership. Diagnostic tools are readily available across the industry. These options support our customers and their ability to maintain and repair their own equipment consistent with manufacturers’ intellectual property rights and the laws across the United States. Operators’ manuals, technical manuals and other resources, are available for purchase to customers and third-party repair providers

through public websites. The diagnostic information available to customers and third parties includes many of the same types of diagnostic information made available to authorized dealers on a subscription basis. Customer and third-party access to diagnostics is extensive. Limitations apply to the extent offerings would compromise product safety, emissions standards, product reliability or manufacturer intellectual property rights.

Similarly, legislation is not necessary for customers to access service and maintenance parts for the equipment we sell. Customers and third-party repair providers can purchase service and maintenance parts through local, independently owned equipment dealers. My dealership employs trained parts professionals and stock inventory close to customers so they can get the right parts quickly in highly time sensitive businesses such as agriculture, construction, roadbuilding, and forestry. Many dealers also stock lower cost “will-fit” parts which a customer may choose to utilize for self-repair. Many manufacturers also have e-commerce platforms which allow customers and third-party repair providers to order certain parts online for direct shipment or for pick up at a local dealer. In fact, industry data suggests that authorized dealers sell more repair parts direct, over-the-counter to customers today than indirectly through their service operations at the dealership. In 2023, more than 63% percent of the parts sold by our dealership were sold over the counter to owners or third-party repair providers doing maintenance or repairs.

While the bill text of the legislation being considered by this Committee has not been released, consistent trends in legislation, which have been seen in recent years, are concerning. Our dealership is independently owned and operated. Parts and labor sales represent the most profitable segments of our businesses. Often, right to repair legislation lacks clear language about whether the obligation to make parts, tools, or documentation available to customers or independent repair providers falls on the OEM or the authorized equipment dealer.

Authorized equipment dealerships, like ours, are a significant source of jobs in the areas where they operate, often in rural communities. We employ sales and marketing teams, operating engineers and highly skilled technicians. We make significant investments in training this critical workforce on the latest products, innovations and solutions offered by OEMs. We also make significant investments to design, build and maintain state-of-the-art facilities to stay competitive and better serve their customers. Right-to-repair legislation too often ignores the major economic impact these businesses have on their communities and the potential threat that unreasonable (and unnecessary) demands of R2R activists pose to their operations.

Many versions of legislation which has been generically called the “right to repair” have common language which seeks to legalize the unlocking, adaptation, and modification of any part of a product, inclusive of its software which controls important safety and data protection features. This approach creates privacy, safety, and data security risks

which are well beyond the information necessary to ensure that equipment can be repaired.

- a. **Safety Features:** In the equipment we sell, many safety features and systems are controlled and monitored through software. For example, some of these systems contain sophisticated embedded software. There is a rapidly expanding field of “Functional Safety” standards governing the structure and development process around this embedded software, which is complex to implement even for experts in the field. Tampering or otherwise altering these systems by anyone other than the experts who develop these systems could be problematic to the safety of the equipment user and to those around them. Some examples of the control systems include auto leveling and anti-spillback features in bucket loaders; hydraulic grade control systems in excavators, crawlers, compact tracked loaders, and graders; and autonomous driving systems for agricultural tractors. Modification of embedded firmware in any of these applications could create dangerous situations.
- b. **Data Protection:** Equipment customers, under any right to repair legislation, should retain complete control of the data generated by their machines, which can only be shared with trusted partners at their discretion.
- c. **Emissions Tampering:** Many proponents of “right to repair” legislation suggest that property ownership entitles them to the “right to modify.” The Clean Air Act prohibits tampering with emissions controls, as well as manufacturing, selling, and installing aftermarket devices intended to defeat those controls. Illegally modified vehicles and engines contribute to pollution that harms public health and impedes efforts by the EPA, tribes, states, and local agencies to plan for and attain air quality standards. *See public website <https://www.repair.org/>: “You bought it, you should own it. Period. You should have the right to use it, modify it, and repair it wherever, whenever, and however you want.” (Accessed 2-9-24).*
- d. **Intellectual Property:** The equipment industry is undergoing unprecedented, generational, technology innovation that has ushered in the rise of autonomous and artificial intelligence-aided machinery. Many of these innovations, including but not limited to some repair related information, may be protected under federal laws that protect intellectual property rights, including but not limited to the Defend Trade Secrets Act (“DTSA”) and the Copyright Act.

With all the repair information available to customers, and the significant concerns outlined herein, we respectfully request that the non-road amendment below be included in any legislation put forward by the Committee for consideration. Of note, several states have enacted “digital” right to repair laws over the past few years. Those states include California, New York, and Minnesota. In 2024, it is anticipated that Oregon and Maine will also enact “digital” right to repair laws which exempt the nonroad industry. *This approach has been followed by the Pennsylvania Senate in pending right*

to repair legislation, S.B. 744. If the House is to draft and pursue language which aligns with the approaches taken in California, New York and Minnesota, our Coalition would be neutral.

Respectfully Submitted,



Chris Swindell
Vice President
Foster F. Wineland Inc.

NONROAD AMENDMENT
ENACTED IN NEW YORK, MINNESOTA
(Passed in Oregon in March 2024 – Awaiting Gubernatorial Consideration)

Manufacturers, distributors, importers or dealers of all off-road (non-road) equipment, including without limitation, farm and utility tractors, farm implements, farm machinery, forestry equipment, industrial equipment, utility equipment, construction equipment, compact construction equipment, road-building equipment, mining equipment, turf, yard and garden equipment, outdoor power equipment, portable generators, marine, all-terrain sports and recreational vehicles (including racing vehicles), stand-alone or integrated stationary or mobile internal combustion engines, other power sources, (including without limitation, generator sets, electric/battery and fuel cell power), power tools, and any tools, technology, attachments, accessories, components and repair parts for any of the foregoing.