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**The Wrong Person for the Job:
Consumer Groups Express Concern about Nominee to Head
Consumer Product Safety Commission**

**Introduction: President Bush Nominates National Association of Manufacturers
Executive to Chair Consumer Product Safety Commission**

On March 1st, 2007, President Bush nominated Michael E. Baroody, who currently serves as Executive Vice President of the National Association of Manufacturers (NAM), to the chairmanship of the Consumer Product Safety Commission (CPSC). The former chairman of the CPSC stepped down in July 2006, creating a vacancy at the top of this important federal product safety agency.

The CPSC is our nation's leading safety agency, responsible for protecting the populace from dangerous products. Consumers depend upon the Commission to keep unsafe products off of store shelves and to protect their families, especially their children.

The CPSC has at least 15,000 different consumer products under its jurisdiction, including many children's products: strollers, swings, cribs, high chairs, baby walkers as well as children's toys and clothing. The leader of this essential safety agency must have the expertise mandated by statute and be committed to CPSC's mission of protecting consumers.

The CPSC's governing statute, the Consumer Product Safety Act (CPSA), calls upon the President to consider individuals who, *"by reason of their background and expertise in areas related to consumer products and protection of the public from risks to safety, are qualified to serve as members of the Commission."*

Michael Baroody is not the right candidate for this position for three main reasons:

- He has not demonstrated a commitment to protecting the public from risks to safety;
- He oversaw efforts to weaken the CPSC and to undermine safety proposals pending before the Commission as one of the top two executives at the National Association of Manufacturers,

- Faced with product safety and public health issues, Mr. Baroody has consistently favored reducing business costs at the expense of consumer protection.

Consumer Product Safety Commission Provides Crucial Public Safeguards

The CPSC plays a critical role in protecting American consumers from product hazards, with at least 15,000 different consumer products under its jurisdiction. Under its statutes, CPSC has the authority to set safety standards, require labeling, order recalls, ban products, collect death and injury data, inform the public about consumer product safety, and contribute to the voluntary standards setting process.

CPSC is the product of a long and evolutionary process. During the 1960s, Congress began studying the problems of hazardous products and saw there was widespread harm. At the same time, newspaper reports and widely read books revealed the personal and societal costs of widely used products like DDT, the Chevy Corvair, asbestos and leaded gasoline. Ordinary citizens began calling on policymakers to require manufacturers to reduce product safety hazards.

A bi-partisan National Commission on Product Safety, appointed by President Nixon, found that too many Americans were being injured and killed by everyday consumer products and that manufacturers continued to make unsafe products regardless of their legal liabilities. The Consumer Product Safety Act,¹ adopted in 1972, created the CPSC to address these gaping needs.

Over the years, CPSC has banned a number of dangerous products,² set mandatory standards for another thirty two, and recalled millions more. It also provides educational outreach to the public about hazards, saving billions of dollars that might have been lost to due to injury or death. Some examples of CPSC's educational efforts include: its recent "Drive for 1 Million"³ initiative which seeks to enroll one million people to receive recall notifications; Neighborhood Safety Networks which seeks organizational partners with which to share and distribute critical safety information to traditionally hard to reach populations;⁴ and annual "Recall Round-ups," which seek to convince consumers to throw away, repair, or replace hazardous recalled products.⁵

CPSC's job today is more challenging than ever. There are more than 27,000 deaths and more than 33 million injuries each year associated with consumer products under CPSC's jurisdiction. However, since the 1980s, the Commission has been slowly starved of staff and resources. While there has been an exponential increase in consumer products since its creation more than 30 years ago, CPSC's staff is projected to be cut to

¹ Consumer Product Safety Act, section 4(a) 15 U.S.C. 2051–2084, Public Law 92-573; 86 Stat. 1207, Oct. 27, 1972.

² Some examples of banned products include: dive sticks, lawn darts, Foil Art Spray Adhesive, "Scotch Brand Spra-Ment" and "Krylon Spray Adhesive."

³ <http://www.epsc.gov/CPSCPUB/PREREL/prhtml07/07132.html>

⁴ <http://www.epsc.gov/nsn/nsn.html>

⁵ <http://www.epsc.gov/ROUNDUP/mdlpr00.html>

401 full time employees (FTEs) this year – which would be an all-time low and less than half the number of people employed by the agency in the 1970s. Additionally, in real dollars, its budget has plummeted.

A Missed Opportunity to Appoint a Product Safety Leader

Section 4(A) of the CPSC’s governing statute, the Consumer Product Safety Act (CPSA), calls upon the President to consider individuals who *“by reason of their background and expertise in areas related to consumer products and protection of the public from risks to safety, are qualified to serve as members of the Commission.”*

While the Consumer Product Safety Act provides for a five – member Commission made up of four Commissioners and a Chairman, for most of CPSC’s history the Commission has consisted of two Commissioners and one Chairman. Since the July departure of CPSC’s previous chairman, Hal Stratton, the position has been vacant, and the CPSC has been without the quorum required to conduct business.

A vacancy at the Consumer Product Safety Commission is an opportunity to provide new leadership for an agency that serves a critical child safety and public health mission. The role of the Chairman is critical for directing the agenda, operations, and priorities of the agency, including all of the executive and administrative functions of the Commission, such as the hiring and supervision of staff, and expenditure of agency resources. All of the offices and directorates of the Commission report to the Chairman, either directly or through the office of the Executive Director.

This vacancy provided an opportunity for the Administration to clarify its support for the mission of the CPSC — and to protect the public from unreasonable risks of injury from consumer products. Unfortunately, the confirmation of Michael Baroody would likely result in a further weakening of this critical agency.

Bush’s Nominee’s Leadership Position at the National Association of Manufacturers

Michael Baroody is currently the Executive Vice President and head of advocacy for the National Association of Manufacturers (NAM). He supervises a staff of approximately thirty five people and is listed on the organization’s tax filings as one of the highest-paid employees and on its Web site as a top official at NAM.

Mr. Baroody’s recent employment history includes: Senior Vice President for Policy and Communications, NAM 1990-1993; President of National Policy Forum from 1993-1994; and Executive Vice President and other positions at NAM from 1994 to present.⁶

⁶http://www.nam.org/s_nam/sec_leadership_detail.asp?TRACKID=&SID=1&VID=129&CID=202659&DID=237938&RTID=0&CIDQS=&Taxonomy=False&specialSearch=False

Mr. Baroody's role at NAM indicates that he is likely a major architect of the manufacturing sector's public relations, lobbying and political strategy on product safety issues.

NAM's Efforts to Weaken Consumer Product Safety

NAM, with at least 14,000 corporate members, represents the nation's largest manufacturing firms on Capitol Hill, before the executive branch and in the courts. NAM's Board of Director includes WR Grace, Altria (formerly Philip Morris), Pfizer, Dupont, ExxonMobil, Intel, AT&T, Chlorox, Shell Oil, General Motors, Verizon, Cargill, Proctor & Gamble, 3M, US Steel, Abbott Labs, Liberty Mutual, and Xerox.⁷

NAM has a special interest in many matters that come before the CPSC, as evidenced by the formation of its "CPSC Coalition," a group of companies and trade associations that make products that fall under CPSC regulation.

Among the members of the "CPSC coalition" is the Juvenile Products Manufacturers Association (JPMA), which represents the major manufacturers of products for children, including cribs, high chairs, baby swings, bath seats, baby walkers, strollers and high chairs and the Toy Association of America. Many of these products have been subject to CPSC recalls, fines, and enforcement actions in the past 15 years, including cribs, bouncy seats, infant swings and many different children's toys.⁸

The CPSC Coalition has a high profile and frequently testifies before Congress and at the CPSC. Indeed, as recently as March 2007, Frederick Locker, general counsel for the Toy Industry Association and the Juvenile Product Manufacturers Association, testified on behalf of NAM before the Senate Commerce Committee conveying NAM's perspective that voluntary programs should be the focus of CPSC's work. Consumer groups support voluntary programs when implemented in conjunction with effective

⁷ http://www.nam.org/s_nam/doc1.asp?CID=202482&DID=237210

⁸ For example: Graco Toddler Bed, 2005, 1.2 million recalled, 77 incidents and 68 injuries; Vermont Precision Woodworks Crib, 2002, 900 recalled, Hufco-Delaware Company and Evenflo Company Inc. Crib, 2003, 364,000 recalled, 41 incidents, 17 injuries; Baby Trend, Inc. Infant Swing, 2002, 15,000 recalled, 10 incidents; Casco Stroller, 2004, 300,000 recalled, 77 incidents, 48 injuries; Sycamore Kids Jogging Stroller, 2006, 4,000 recalled, 49 incidents, 5 injuries; Small World Toy Wooden Puzzle, 2007, 78,500 recalled, 42 incidents; Small World Toy Vehicle, 2006, 92,300 recalled, 11 incidents; Wild Planet Pool Toy, 2006, 273,000 recalled, Babe Swede Infant Carrier, 2004, 49,000 recalled, 93 incidents; Zolo Wear, Inc. Infant Carrier, 2005, 165 recalled, Kole Imports Pacifier, 2006, 3,600 recalled; Various Firms Pacifiers, 2006, 237,000 recalled; Miracle Recreation Co. playground swing, 2002, 22,000 recalled, 2 incidents, 2 injuries; Penalties against child product manufacturers for failing to report product hazards have included \$225,000 in 1996 against JBI playground equipment makers, \$725,000 in 1996 against COSCO for toddler beds and rails that caused strangulation, \$150,000 in 1998 against Binky Griptight pacifiers for strangulation hazard, \$225,000 against Century Products cribs and strollers for suffocation hazard, \$400,000 against Hasbro infant carriers in 2000 for skull fracture and other infant hazards, \$200,000 in 2000 against Baby's Dream cribs for fingertip amputation hazards. See "It's No Accident – How Corporations Sell Dangerous Baby Products," by E. Marla Felcher.

regulatory efforts. However, we believe that voluntary efforts alone are far less likely to achieve safety improvements that adequately protect consumers.

In fact, NAM and Mr. Baroody share a long history of working on behalf of a legislative and regulatory agenda that would diminish public health and safety. While NAM has repeatedly voiced strong opposition to many regulations designed to protect the health and safety of American citizens, we could find no evidence that NAM or Mr. Baroody have ever advocated for stronger regulatory safeguards.

NAM does not limit its lobbying activities to the executive branch of government. It also works to limit consumer access to the courts, an important avenue for holding corporate wrong-doers accountable for harm.⁹

NAM's CPSC Coalition's Activities

NAM has worked diligently to represent the interests of manufacturers and businesses with regard to issues involving the CPSC. For example on March 21, 1995, David Rohn, Executive Director of NAM's Association's Council, submitted written testimony on behalf of the organization before the House Appropriation Subcommittee on Veterans Affairs, Housing and Urban Development and Independent Agencies. His testimony included NAM's view of CPSC activities:

CPSC has evolved into a regulation oriented agency, imposing burdens on consumers and manufacturers without corresponding product safety benefits. . . . the CPSC and its senior officials have increasingly used the media and public relations tactics to raise unreasonable consumer fears and to intimidate and embarrass product manufacturers into agreeing to recalls or changing product designs even if there is no defect or substantial product hazard. . . . But these manufacturers should not be brow-beaten into changing these standards when products are not unreasonably dangerous and injuries are due to consumer misuse.¹⁰

Rohn later testified before the Senate Subcommittee on Consumer Affairs, Foreign Commerce and Tourism, on April 23, 1996. His testimony revealed more about NAM's true view of the CPSC, including criticism of what NAM viewed as the

⁹ See analysis by Public Citizen at <http://www.citizen.org/autosafety/regs/articles.cfm?ID=16446>; NAM Legal Reform Agenda , Asbestos Litigation, Class Action, Frivolous Lawsuits Sanctions, Medical Liability, Regulation and Taxation through Litigation, Statute of Repose Venue Reform, and Comprehensive Procedure Reforms, that includes: Uniform Punitive Damages Standard; Proportionate Liability; Small Business Cap on Punitive Damages; Substance Abuse/Misuse/Alteration Defenses; Limited Product Seller Liability; Alternative Dispute Resolution; Statute of Limitations; Loser Pays and Reduction of Damages for Workers Compensation Benefits. See http://www.nam.org/s_nam/doc1.asp?CID=202331&DID=234995

¹⁰ Written testimony submitted by the National Association of Manufacturers in March 21, 1995, House Appropriation Subcommittee on Veterans Affairs, Housing and Urban Development and Independent Agencies, statement of David Rohn, Executive Director of the Associations Council of NAM.

Commission's broad scope and a recommendation to narrow its authority to protect consumers.

. . . [T]he Commission's mission and activities must be refocused to ensure fair treatment of manufacturers and conservation of scarce public and private resources.¹¹

NAM's Efforts to Weaken Product Safety and Disclosure Rules

NAM has a long history of working to weaken product safety and disclosure rules. In 1995, NAM stated that, "The CPSC was designed to protect the rights of consumers and manufacturers in a market driven economy."¹² This is a misrepresentation of the agency's statutory mission. The Commission was created to "protect the public against unreasonable risks of injuries and deaths associated with consumer products." While CPSC may consider the costs of regulatory activity to affected businesses, the agency's mission does not include "protecting the rights of manufacturers."

NAM's Rohn also claimed that "consumer misuse" of products should be a factor in whether or not the Commission regulates certain products. This is also erroneous. Robert Adler, former attorney at the CPSC, clarified the Commission's mandate in a letter to Congress:¹³

One of the primary reasons for establishing a federal health and safety agency was to fill the gap in product liability law presented by tort law. . . [t]he presence of contributory negligence can, on occasion defeat or substantially diminish the impact of a product liability suit. Congress wanted no such limitation with respect to product safety regulation. The operative test in determining whether the CPSC should take action has relatively little to do with whether or not a consumer has acted carelessly. Rather, the agency is supposed to look at and weigh the following sorts of factors:

- The severity and frequency of the harm associated with a product hazard
- Whether a product fix can be done inexpensively
- Whether a product fix would interfere with the product's utility

¹¹ Testimony of David W. Rohn, Executive Director, National Association of Manufacturers Associations Council before the Subcommittee on Consumer Affairs, Foreign Commerce and Tourism, on behalf of the NAM CPSC Coalition, Senate Committee on Commerce, Science and Transportation, April 23, 1996.

¹² Written testimony submitted by the National Association of Manufacturers in March 21, 1995, House Appropriation Subcommittee on Veterans Affairs, Housing and Urban Development and Independent Agencies, statement of David Rohn, Executive Director of the Associations Council of NAM.

¹³ Robert (Bob) Adler is Professor at the Kenan-Flagler Business School at the University of North Carolina, Chapel Hill. Letter to the Honorable John Edwards, April 25, 2001. Mr. Adler is a member of the Consumers Union Board of Directors.

NAM's Opposition to CPSC Efforts to Make Baby Walkers Safer

In this same statement, Rohn criticized the Commission for initiating a rulemaking on baby walkers. Between 1989 and 1994, baby walker-related emergency room visits increased steadily, reaching 28,000 in 1994. Over this period, 11 children died using baby walkers. Many others suffered concussions, burns and spine fractures. Most injuries occurred when children under 15 months fell down stairs.

NAM opposed a rulemaking for baby walkers, maintaining that the injuries were caused not by a dangerous product, but by irresponsible parents who inadequately supervised their children. Rohn told the Subcommittee that CPSC “would rather effectively ban a product that four million parents use to regulate the one percent of those who poorly supervise their children.”¹⁴ However, two-thirds of baby walker tragedies occurred while children were in the same room with their caregiver, demonstrating that the product is not safe for a child even while he or she is attended.¹⁵

At the time, baby walkers accounted for more deaths and injuries than any other baby product. The rulemaking suggested ways manufacturers could create safer walkers: build them too large to fit through doors and limit their mobility with braking mechanisms.

To avoid having a mandatory rule imposed on them, manufacturers developed a far more stringent voluntary standard. In addition, a new stationary product was introduced into the market and a massive media campaign educated consumers about the dangers of baby walkers. These efforts led to the reduction in numbers of deaths and injuries related to baby walkers. According to CPSC statistics, released September 19, 2000, baby walker-related injuries to children under 15 months had dropped almost 60%, from an estimated 20,100 in 1995 to 8,800 in 1999, for a reduction of 11,300 injuries per year. It is hard to believe that these actions would have occurred without the threat of a mandatory rule from the CPSC.

NAM's Opposition to Proposal to Increase Recall Effectiveness

In February of 2003, a representative of the NAM CPSC Coalition testified before the CPSC in opposition to a petition by consumer groups intended to improve the way consumers find out about recalls of dangerous products. The proposal called on consumer product manufacturers to institute more effective systems to directly notify consumers of a children's product recall. Recalls are now disseminated to media outlets for release and publication. However, these efforts often fail to reach consumers who most need to know about recalls – those who have the product in their possession. Product registration cards provide a means for consumers to be directly notified about a product recall. Charles Samuels, an official with the Association of Home Appliance Manufacturers, who testified on behalf of NAM, opposed this proposal. NAM's position was based primarily

¹⁴ *Ibid.*

¹⁵ Damien Cave, “Rolling Baby Killers,” *Salon*, December 30, 1999, www.salon.com.

on the cost of these cards, which was estimated at about \$0.55 each. The CPSC later rejected the consumer group's petition.

In May 2003, after a lobbying effort by NAM, the CPSC dropped stronger penalties for lawyers engaged in unethical conduct. The rules were created after CPSC found evidence that lawyers for a leading appliance manufacturer were withholding documents from CPSC on toaster fires and hiding documents that revealed safety problems with these appliances.¹⁶ The company eventually admitted that it had known about approximately 1,000 toaster fires before reporting these "substantial product safety hazards" to the CPSC. Although the company settled with CPSC, paid a penalty of \$575,000 and recalled the defective models, the rules that were dropped at NAM's insistence would have given CPSC greater power to prevent and deter unethical conduct by outside parties in matters before the Commission. Such actions often prevent or delay the Commission from taking action to fix safety problems.

NAM Efforts to Weaken Hazardous Product Reporting Requirements

More recently, NAM has attempted to weaken the CPSC's regulatory enforcement powers. In 2006, NAM sent comments to CPSC about the Commission's proposal – developed in response to industry requests – to weaken reporting requirements for hazardous products under Section 15(b) of the CPSA. The NAM CPSC coalition argued that "the law and current implementing regulations are vague and ambiguous. It is difficult for manufacturers, especially small businesses, to determine when reporting and corrective action is necessary."¹⁷

Consumer safety groups opposed the changes to 15(b), fearing that the changes would diminish the important information CPSC staff receives from businesses about dangerous or defective products that have come to the company's attention. CPSC Commissioner Thomas Moore publicly indicated that he had serious reservations about weakening reporting requirements:

For some time, various business groups have been urging the Commission to make changes to our interpretation of the section 15 reporting requirements . . .¹⁸ The revisions being offered for public comment are apparently being proffered in response to those overtures. The rationale given in this Federal Register notice for these revisions is to "provide further guidance, clarity and transparency to the regulated community on reporting obligations under section 15(b)" I

¹⁶ David Enrich, "Consumer Agency Drops Plan to Regulate Lawyers; Target Was Unethical Conduct in Safety Cases," Washington Post, May 12, 2003, p A 17.

¹⁷ David Asselin, Executive Director, Council of Manufacturing Associations, on behalf of the NAM CPSC Coalition, June 26, 2006. "The Coalition is a group of companies and trade associations that have a common interest in and are affected by the CPSC."

¹⁸ The transcript of Moore's statement referenced the following: Letters to James Fuller, CPSC former Chief of Staff, from the Association of Home Appliance Manufacturers and the Toy Industry Association, dated June 16, 2004 and August 23, 2004, respectively and the log of the public meeting held on June 24, 2004, on the AHAM proposals.

certainly have no quarrel with the goals of “guidance, clarity and transparency” but I am not sure these revisions accomplish them.”¹⁹

Michael Baroody’s Efforts to Defeat Fire Safe Cigarette Legislation

In 2000, Mr. Baroody sent a letter to then Governor Pataki of New York, urging him to veto the Cigarette Fire Safety Act, introduced to curb the number one cause of home fire deaths in the United States, killing between 700 and 900 people each year.²⁰ Ignoring the desire of state legislators to save the lives of a large number of people who perish in fires started by cigarettes in New York, Mr. Baroody argued that the states were not the constitutionally appropriate forum for addressing this issue and that it was up to the federal government to address this issue.²¹ “A fire-safe cigarette standard needs to be national in scope to effectively minimize any adverse impact on the free flow of interstate commerce,” Baroody stated. Governor Pataki signed the bill and numerous other states have since followed New York’s lead. Near identical laws have been adopted by California, Illinois, Vermont, Massachusetts, New Hampshire and Kentucky.

Conclusion: The Wrong Person for the Job

The CPSC was created in 1972 by Congress through the Consumer Product Safety Act and charged with “protect[ing] the public against unreasonable risks of injuries and deaths associated with consumer products.” The Consumer Product Safety Commission’s work is estimated to save society some \$700 billion each year.²² More importantly, its efforts save lives and prevent injuries. This is a formidable mission that affects all consumers, especially the health and safety of children.

The CPSC Chairman should champion product safety and work to uphold the mission of the agency without predisposition or bias. As the head of advocacy at NAM, Michael Baroody has every right to work on behalf of manufacturing interests and we have no doubt that he has represented those interests well. Our organizations have worked with business interests in support of laws and regulations that will benefit consumers.

However, Mr. Baroody’s record of advancing a public policy agenda that would weaken health and safety protections for consumers makes him ill-suited to lead a critical federal safety agency like the CPSC. It is difficult to believe that Mr. Baroody could

¹⁹ Statement of the Honorable Thomas H. Moore on the Publication of the Federal Register Notice Seeking Public Comments on Proposed Revisions to 16 C.F.R. PART 1115 May 19, 2006.

<http://www.cpsc.gov/PR/MooreCFR1115.pdf> 28.1KB

²⁰ These statistics are from the Fire Safe Cigarette Coalition web site. On line at:

<http://firesafecigarettes.org/itemDetail.asp?categoryID=85&itemID=1233&URL=Research/The%20smoking-material%20fire%20problem>.

²¹ Letter is available on the web at http://www.nam.org/s_nam/doc1.asp?CID=202332&DID=220952.

²² U.S. Consumer Product Safety Commission, 2008 Performance Budget Request, submitted to Congress, February 2007, page 72. On the web at <http://www.cpsc.gov/CPSC/PUBS/REPORTS/2008plan.pdf>

suddenly reverse course and oppose initiatives that would harm consumers. The American public, under law, must have a CPSC Chairman who has the expertise and commitment to put consumer protection and child safety first. We urge members of Congress to reject this inappropriate nomination.