

April 25, 2007

The Honorable Daniel K. Inouye
Chairman, Senate Committee on Commerce, Science, and Transportation
722 Hart Senate Office Building
Washington, D.C. 20510

Re: Nomination of Michael Baroody to be CPSC Chairman

Dear Senator Inouye,

I am writing to you and the members of the committee to express my deep opposition to the nomination of Michael Baroody to fill the position of Chairman of the Consumer Product Safety Commission (CPSC). I believe that after you and your colleagues weigh Mr. Baroody's long history as a partisan advocate on behalf of manufacturers against his total lack of any experience advancing product safety or the interests of consumers, you will conclude that his nomination to be the nation's product safety leader is wholly inappropriate. There is literally nothing in his background that gives one any confidence that he will embrace the mission of the Consumer Product Safety Act (CPSA) with the kind of energetic focus on reducing injuries and advancing safety that Congress intended—a focus that consumers depend on for the safety of their families. Therefore, this nomination should be rejected.

My concern and support for the effectiveness of the CPSC in protecting consumers has spanned the last 34 years, virtually since the day it opened its doors in 1973. At that time, I was appointed commissioner at the CPSC by President Richard Nixon. I was re-appointed commissioner by President Jimmy Carter, and I served for a period as acting-Chairman during Ronald Reagan's presidency. When my second term expired in 1982, I became the Technical Director of Consumers Union (CU), the non-profit publisher of Consumer Reports, and for some 20 years oversaw that organization's product and auto test programs, creating the information about product safety and quality published in the pages of Consumer Reports. I retired from CU in 2005 and am currently active in two of the nation's largest industry voluntary standards organizations.

In short, I have devoted my professional career to reducing the frequency and severity of product-related deaths and injuries to consumers through the judicious use of mandatory and voluntary product standards, consumer information programs, product recalls, and bans. I have seen firsthand what works and what doesn't work in both the public and private sectors.

To understand how inappropriate the Baroody nomination is, one need only look at it in the context of the Consumer Product Safety Act and the CPSC's impact on consumer safety. Before the commission opened its doors in 1973, product safety was woefully inadequate in many sectors of the American marketplace. Indeed, the National Commission on Product Safety advised Congress in June 1970 of a stark reality, which, in many ways, still holds true today:

“As related to product safety, self-regulation by trade associations and standards groups, drawing upon the resources of professional associations and independent testing laboratories, is legally unenforceable and patently inadequate.

Competitive forces may require management to subordinate safety factors to cost considerations, styling, and other marketing considerations.

There is a dearth of factors motivating producers toward safety. Only a few of the largest manufacturers have coherent, articulated safety engineering programs. Manufacturers’ efforts to obtain data on injuries and on the costs and benefits of design changes that will reduce unreasonable hazards can be charitably described as sketchy and sporadic.”¹

The good news is that since the CPSC began implementing the CPSA, more manufacturers have elevated the role of safety to a more prominent position in their product design process. Some even market the safety of their products as positive attributes in an effort to appeal to consumers.

The bad news is that not enough manufacturers treat safety with the importance required to adequately protect consumers. I don’t believe they are callous or indifferent to the safety needs of their customers, but rather, in the frenzy of a highly competitive marketplace, they do not take the time or appreciate the need to affirmatively press their designers to develop products that mitigate foreseeable injury patterns. Also, it is too easy for some companies to blame the victim’s behavior for an injury and choose to take their chances fighting personal injury lawsuits.

Hence, while product safety has definitely improved, there continues to be an urgent need in the marketplace for strong leadership from CPSC—leadership that is committed to implementing Congress’s mandate. In Section 2 of the CPSA, Congress described the essence of CPSC’s mission: first and foremost, reduce or eliminate patterns of injury and death associated with unreasonably hazardous products. Congress gave CPSC the authority and regulatory tools to carry out this mandate, requiring that its actions be economically and technologically feasible.

Section 2 also serves as a constant reminder that the CPSC was created by Congress to protect **consumers**. It was specifically not created as an arm of the Commerce Department, which has a quite different mission, one that helps promote the success and growth of business. Moreover, it was created as an independent regulatory agency, one that can and should act without interference or direction from the Executive branch.

Unlike economic regulation, which focuses primarily on such things as interest rates, currency markets, balance of trade, and the supply of crude oil, CPSC’s focus is on reducing or eliminating unreasonable risks to consumers. The value of the dollar can fluctuate, but it can be regulated to meet certain economic and political goals. In contrast, the tragic loss of a small child who suffocates in a poorly designed crib or playpen causes extreme pain and anguish, and

¹ “Final Report of the National Commission on Product Safety,” presented to the President and Congress, June 1970, p. 2

is not affected in any way by market adjustments. The pain and agony from a product-related death or serious injury is high regardless of which party occupies the White House or rules the Congress—it transcends partisan politics. While CPSC must weigh objective factors such as mortality rates and injury statistics, feasibility of alternative engineering fixes, and the economic impact and costs of design remedies, the safety of the consumer must always be paramount.

Since 1973, enforcement of CPSC’s safety rules has resulted in substantial reductions in the numbers of deaths and injuries to consumers from hazardous products—and all were accomplished in a cost-effective manner. Safety standards for lawn mowers, infant cribs, architectural glass, child-resistant-closures for dangerous chemicals and prescription drugs, flammable clothing and household furnishings, toys, and bicycles are notable examples of CPSC actions that have led to saving thousands of lives and avoiding millions of injuries since these rules became effective. There are consumers today who are alive or not seriously injured because of the CPSC. But I must stress to you that these successes were often accomplished over strong resistance from the affected industries and their trade associations. In the end, the CPSC was successful because the then-sitting commissioners were each committed to implementing the CPSC’s consumer safety mandate, party affiliations notwithstanding.

Unfortunately, in recent years there has been weak leadership at the top of the CPSC. For example, the agency is inadequately staffed to do the huge job expected of it, yet the commissioners acquiesce when their staff and budget are continually cut by the administration. And they do not, as a commission, direct the CPSC staff to vigorously press manufacturers to make their products safer or to recall hazardous products in the hands of consumers.

The agency must have strong leadership if it is to protect the public. The Chairman of the CPSC plays a critical role in shaping the product safety agenda in America. The Chairman not only influences the other commissioners, but also sets the tone for the CPSC staff. He or she is the government’s leading product safety voice in America, one who warns consumers about serious risks while also pressing manufacturers to bring safer products to market. In a real sense, for the agency to be effective, the Chairman needs to become the consumer’s advocate in the marketplace. This is the kind of person we all need to head the CPSC.

When I hold Mr. Baroody’s background and skills up to this test, they fail. There is a woeful lack of experience in product safety or consumer protection. Quite the contrary, Mr. Baroody has earned his spurs over many years by protecting manufacturers from government regulatory efforts—often to the detriment of consumers. Mr. Baroody may well be a good candidate for a position at another agency, but as a candidate for Chairman of the CPSC, he is not qualified.

Moreover, I believe Mr. Baroody’s background does not fit the requirements wisely set forth by the Congress for appointments to the commission. Section 4(a) of the CPSCA reads in part:

“...In making such appointments, the President shall 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. ...”

Just as the public deserves to have experienced medically trained professionals appointed to agencies researching medical remedies, both consumers and businesses alike deserve to have decision makers at CPSC who are experienced in handling complex product safety issues.

In addition to a dearth of experience in product safety or consumer protection, Mr. Baroody and his current employer, the National Association of Manufacturers, have taken decidedly hostile positions toward CPSC initiatives in the past. Should Mr. Baroody become Chairman of the CPSC, what is to stop that same hostile attitude from radiating from the Chairman's office and spreading throughout the agency via the bevy of personal advisers and staff appointments he would bring in from outside? From my experience, this would greatly demoralize CPSC's dedicated career staff as well as slow future progress in product safety to a virtual halt. It is all too easy for Mr. Baroody's former clients and associates to assume they have a close friend in the Chairman's office, and to simply not take CPSC safety initiatives seriously. This scenario has a bad outcome for consumers and will be manifest in future injury and death statistics.

In summary, consumers need a strong product safety leader appointed to be Chairman of the CPSC. Today's consumer products are manufactured worldwide in a highly competitive global environment, and when they are frantically rushed to market in response to competitive pressures, safety can be easily shortchanged. Whether setting standards, recalling defective products, or informing consumers, the CPSC Chairman has the awesome responsibility to protect public safety. He or she must be committed to implementing the mission of CPSC with determination and commitment. In our various roles as consumer, parent, grandparent, and spouse, we depend on the products we use everyday to be free of safety defects and unreasonable risks. We depend on CPSC to use its authority whenever necessary to make sure this all happens. With Mr. Baroody as Chairman, I have major misgivings that this will not happen.²

Mr. Chairman, consumers depend on you and your committee to approve only those appointments that are meritorious and appear likely to succeed in their sphere of activity. Such is not the case here: The Baroody nomination has serious flaws. I urge you to block this appointment.

Thank you for your consideration of these views. If you have any questions, I would be pleased to provide additional information.

Respectfully yours,

R. David Pittle, Ph.D.
CPSC commissioner (1973-82)
Consumers Union (1982-2005)

² Balance of perspective on the commission is important. Most recently, Ms. Nancy Nord, an official of the Kodak company, was appointed to CPSC as a commissioner. A Baroody appointment would be the second consecutive appointment to CPSC of someone with deep ties to the industries regulated by CPSC, and would give the three-member commission a decidedly lopsided sensitivity and bias favorable to business concerns.

cc: Senator Hilary Clinton
Senator Charles Schumer
Representative John Hall

Letter submitted by

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