

ConsumersUnion®

THE ADVOCACY DIVISION OF CONSUMER REPORTS

September 25, 2018

U.S. Senate
Washington, D.C. 20510

Dear Senator:

Consumers Union, the advocacy division of Consumer Reports, writes regarding the approach to nominations on the Senate floor this week, specifically regarding the two nominations being considered for a new Commissioner of the U.S. Consumer Product Safety Commission (CPSC). As an independent, nonprofit member organization that has worked with and for consumers to create a fairer, safer, and healthier marketplace since our founding in 1936, we urge the Senate to follow the law and established past practice in dealing with these nominations.

We take no position on the merits of the nominee to serve out the remainder of the term expiring October 26, 2019, in place of Joseph P. Mohorovic. However, we must oppose the consideration of his separate nomination to a full seven-year term on the Commission starting October 27, 2019, at this time. Therefore, if this second nomination is put to a vote on the Senate floor, we urge you to **vote no**, whether on cloture or on confirmation.

The power of the Senate to provide advice and consent on nominations is one of its most important and influential roles. It would be highly inappropriate, and raise significant constitutional concerns, for seated Senators in the current Congress to confirm a nominee to a term that does not begin until a subsequent Congress. Such a nomination should be considered by the duly elected Senators of that subsequent Congress; otherwise, these Senators would be denied their constitutional power to provide advice and consent on the nomination.

Furthermore, this second nomination violates the CPSC's governing statute. Under Section 3(b)(2) of the Consumer Product Safety Act, "Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed *shall be appointed only for the remainder of such term*" (15 U.S.C. 2053(b)(2), emphasis added). Given the initial nomination made for the remainder of Mr. Mohorovic's term, the plain text of the Act prohibits this nominee from being appointed, at the same time, to be a CPSC Commissioner for any other term, including the one beginning on October 27, 2019. In keeping with the requirements of the Act, the Senate should not be considering the second, premature CPSC nomination of this individual that has been received from the President.

Given these concerns, we urge you to call for the second nomination pertaining to a new Commissioner of the Consumer Product Safety Commission to be set aside, and if it is not, to **vote no** on this nomination for a full seven-year term on the CPSC starting October 27, 2019.

Sincerely,

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