
From: Rick Woldenberg

Sent: Sat 1/10/2009 3:34 PM

To: 'Judith.bailey@mail.house.gov'; 'Christian.fjeld@mail.house.gov'; Robin Appleberry (robin.appleberry@mail.house.gov)

Cc: Etienne Veber; 'Michael Gidding (mjg@brown-gidding.com)'; 'Nancy Nord (nnord@cpsc.gov)'; 'Joe Martyak (jmartyak@cpsc.gov)'; 'tmoore@cpsc.gov'; 'jmullan@cpsc.gov'; 'Brian_hendricks@hutchison.senate.gov'; 'david@commerce.senate.gov'; 'Shannon.weinberg@mail.house.gov'; 'Brian.mccullough@mail.house.gov'; 'Cathy.hurwit@mail.house.gov'; Larry Lynn; 'MToro@cpsc.gov'; 'william.carty@mail.house.gov'; 'patrick.magnuson@mail.house.gov'; pwell@cpsc.gov; mgougisha@cpsc.gov; cfalvey@cpsc.gov; bridget.petruczok@boxer.senate.gov; michael_daum@cantwell.senate.gov; bill_ghent@carper.senate.gov; hap_rigby@demint.senate.gov; frannie_wellings@dorgan.senate.gov; david_quinalty@ensign.senate.gov; james_chang@inoue.senate.gov; jamie_phillips@kerry.senate.gov; jonathan_becker@klobuchar.senate.gov; michelle_schwartz@lautenberg.senate.gov; lee_dunn@mccain.senate.gov; sonya_wendell@mccaskill.senate.gov; christopher_day@nelson.senate.gov; andrew_grobmyer@pryor.senate.gov; james_reid@rockefeller.senate.gov; betsy_mcdonnell@smith.senate.gov; matthew_hussey@snowe.senate.gov; christine_kurth@stevens.senate.gov; mike_orielly@senunu.senate.gov; brendan_plack@thune.senate.gov; garret_graves@vitter.senate.gov; hugh_carroll@wicker.senate.gov; sarah.baldwin@mail.house.gov; elissa.levin@mail.house.gov; christopher.schepis@mail.house.gov; theresa.lavery@mail.house.gov; greg.louer@mail.house.gov; brian.diffell@mail.house.gov; amy.ingham@mail.house.gov; laura.vaught@mail.house.gov; matt.johnson@mail.house.gov; saul.hernandez@mail.house.gov; mike.kelly@mail.house.gov; aaron.shapiro@mail.house.gov; rick.axthelm@mail.house.gov; steve.plevniak@mail.house.gov; scott.cleveland@mail.house.gov; jonathan.smith@mail.house.gov; pat.cavanagh@mail.house.gov; rachel.wood@mail.house.gov; michael.gaffin@mail.house.gov; derick.ap@mail.house.gov; aaron.ringel@mail.house.gov; angela.manso@mail.house.gov; dana.lichtenberg@mail.house.gov; derrick.ramos@mail.house.gov; elizabeth.stack@mail.house.gov; julie.hulings@mail.house.gov; lori.pepper@mail.house.gov; josh.connolly@mail.house.gov; david.bahar@mail.house.gov; mark.bayer@mail.house.gov; Neeta.Bidwai@mail.house.gov; kyle.victor@mail.house.gov; chris.debosier@mail.house.gov; morgan.jones@mail.house.gov; matthew.dockham@mail.house.gov; tuley.wright@mail.house.gov; cade.king@mail.house.gov; betsy.christian@mail.house.gov; chris.herndon@mail.house.gov; Mike.Ward@mail.house.gov; laura.abshire@mail.house.gov; randi.meyers@mail.house.gov; Greta.Hanson@mail.house.gov; liz.muro@mail.house.gov; matt.mandel@mail.house.gov; jamie.euken@mail.house.gov; jon.oehmen@mail.house.gov; brad.schweer@mail.house.gov; dana.grayson@mail.house.gov; michael.beckerman@mail.house.gov; valerie.henry@mail.house.gov; Becky.Claster@mail.house.gov; tiffany.guarascio@mail.house.gov; jeff.mortier@mail.house.gov; kenneth.schwarz@mail.house.gov; Pamela Gilbert (pamelag@cuneolaw.com); Robert Adler

Subject: CPSIA - The Emperor Has No Clothes

I recently saw this video about a doll store in Hawaii that is planning to close because of the CPSIA and recommend that you watch it, too:

<http://www.khnl.com/global/video/flash/popupplayer.asp?ClipID1=3323714&h1=New%20lead%20law%20on%20kid%27s%20items%20threatens%20to%20close%20local%20doll%20shop&vt1=v&at1=News&d1=137133&LaunchPageAdTag=News&activePane=info&rnd=25878297>

I am sure the world can live without another doll store. However, the owner of this particular store and her special needs child will suffer certainly. Should we care, especially since the law is making children so much "safer"? I think so, and here's why:

1. There is no reason for ANYONE to suspect that this doll store has EVER harmed anyone in any way. Can anyone provide ANY data to suggest that this store's products will harm anyone because of lead? No, absolutely not. I am fully confident that we can all agree that these dolls are highly unlikely to be harmful because of lead. So what have we accomplished?
2. Recognizing that these products could not realistically have any lead safety issues, the requirements of the law are extremely wasteful in this case, and are so serious that they threaten the very existence of the store and its products. [Notably, although the press is only focusing on the cost of testing, the list of problems caused for this doll store does not end there (not discussed in the video or in this email).] So what have we accomplished?
3. The diversion of capital and human resources to wasteful activities like excessive and almost neurotic testing prevents all kinds of alternative, productive uses of the financial and human capital being wasted. So what we have accomplished?
4. Given that the products and services of this store are useful and its profits are also deployed usefully in society (see the video), and further that as a direct result of the CPSIA the store will have to close, what have we accomplished?

The story of this doll store is TYPICAL of the ill effects of this law. Don't be distracted by the particulars of this person's story - she stands for everyone similarly victimized by the CPSIA. The storyline may change but the story remains the same - there is a societal recognition that American products are safe. The idea that our economy is "full" of unsafe children's products is fed by fear mongering, not facts. The CPSIA with its excessive "zero tolerance" approach neither contributes to additional safety (whatever that means) or to the efficient functioning of the economy. The day of reckoning is coming, and these cries for help are being ignored. Something must be done

So I am here to announce, for the first time, that the EMPEROR HAS NO CLOTHES. The CPSIA has nothing to do with safety - it is about vengeance, retribution and displaced anger. The discussion about safety under this law has become abstract and spiritual in nature, as though "safety" were a state of mind or some kind of karma level. That's not how the real world works - safety relates to RISK and risk can and needs to be defined. By drafting the CPSIA in such an absurdly overly-broad manner, Congress has created the conditions for debates like whether this little doll shop makes lead-laden dolls. I find it hard to dignify such debates by taking them seriously, as the notion that the subject dolls are somehow a safety risk is patently absurd, as is obvious to anyone living in the real world filled with real products and real risks.

How did this happen? The Emperor's new set of invisible clothes were borne of anger from "43 million toys recalled in 2007". [See <http://www.todaysthv.com/news/local/story.aspx?storyid=78263>.] What exactly happened in 2007? The lead-related recalls related to LEAD-IN-PAINT, not lead in substrates. [In addition, there was one tort involving one piece of lead jewelry.] Lead-in-paint has been illegal for decades. I hate to be a killjoy, but this means that the problem in 2007 was compliance with law, not the strictness of the rules. This is a behavioral issue, not a restrictions issue, and requires a thoughtful solution tailored to the nature of the problem (lack of compliance). By extending the law well beyond the known safety issue (lead-in-paint) to a laundry list of imaginary risks not associated with actual injuries, we end up arguing about whether cloth dolls, culturally-authentic clothing, microscope bulbs and Harry Potter books present a lead danger. If we are going to pay to prevent safety "risks" of that microscopic magnitude, why stop there? If children's products up

to age 12 are such a serious (and undefined) lead safety issue, why aren't dog toys? Why aren't products for adults? What about industrial products? What about products we put on spaceships?

And, no, the CPSC cannot clothe the naked Emperor. It's simply not workable to write an ultra-complex law no one understands and then instruct a federal agency to just go "fix it". Even if that were possible, if a magical set of rules could be written that would fix the law so that all these various unthreatening situations could be addressed one-by-one (shoemakers, doll stores, t-shirt vendors, the needs of stores with less than five employees, blah blah blah), we would be left with such a vast crazy quilt of FAQs, interpretations, legal opinions, rules and regulations that compliance would become only a theoretical possibility. Again, don't blame the CPSC for the state of the implementing rules - until you try to write them yourself. Even the tax code makes more sense than this.

The Emperor Has No Clothes - the CPSIA's gotta go. We can have plenty of "safety" without such a vindictive and overly-broad law on the books. I hope you will invite industry to help you urgently draft this new law, one to protect American children and the American economy appropriately for our lasting communal benefit.

Sincerely,

Richard Woldenberg
Chairman
Learning Resources, Inc.
Tel 224 436 0265
rwoldenberg@learningresources.com