

TESTIMONY OF RICHARD WOLDENBERG
Subcommittee on Commerce, Manufacturing and Trade
Committee on Energy and Commerce
United States House of Representatives
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Ms. Chairman, Ranking Member Butterfield and distinguished Members of the Subcommittee, thank you for the opportunity to testify this morning. My name is Richard Woldenberg. I am Chairman of Learning Resources, Inc., an Illinois-based 150-person manufacturer of educational materials and educational toys. I am accompanied today by my son Ben and my daughter Elana. This is my second appearance before this Subcommittee to testify about the CPSIA.

Three years after its passage, the high cost of the CPSIA, its over-reaching and intrusive nature, its non-existent impact on injury rates and its depressing effect on markets is beyond dispute. What remains a mystery is why we did this to ourselves in the first place.

The crisis, such as it is, seems like media-fed hysteria. CPSC recall statistics reflect only three unverified injuries and one death attributed to lead from March 1999 – April 2010 out of literally TRILLIONS of product interactions by tens of millions of children. Notably, there has only been ONE recall of phthalates in U.S. history – 40 little inflatable baseball bats in 2009.

The *possibility* of injury is real – but what is the *probability* of injury? Supporters of the CPSIA have never proven a *causal link* between the purported hazard in children's products and actual cases of injury. This is a very serious indictment of the law. Children take lead into their bodies in many ways, including through the air, water and food every day. The CPSIA places **all the blame** on children's products – without any substantive proof of cause.

Lead or phthalates poisoning may seem so frightening that no price is too high to pay. In our panic, the absence of proof that children's products are causing injury hardly seems to matter – but in the wake of Toyota, is jumping to conclusions about causation still acceptable? Is it responsible government to simply argue that the CPSIA doesn't harm children and that businesses will just absorb the costs?

The harm inflicted by the CPSIA has been brought to this subcommittee's attention time and again over the last three years:

- a. Absurdly high compliance costs. We have experienced a 10x increase in costs from 2006-2011, all without ANY change in the safety of our products – they were safe to begin with! This cost jobs and curtailed business expansion plans.
- b. Rules Mania. Doubt over the interpretation of CPSC rules is widespread. No wonder - the rules and law applicable to our business now balloon over 3,000 pages – and counting. Several customers responded to this uncertainty by instituting their own safety rules. One even insisted that we test for lead-in-paint even if the item has no paint on it.
- c. Absurd complexity. The explosion of safety rules makes it difficult or impossible to know how to comply. In the context of a real product line, there is just too much to figure out. What is and isn't a "Children's Product"? What's a "toy"? Which materials need to be tested or retested? In practical terms, it's a nightmare. Other rules make us look stupid to consumers. For instance, consider this warning

on one of our rock kits: “Caution: Federal law requires us to advise that THE ROCKS in this educational product may contain lead and might be harmful if swallowed.” This is a form of humiliation for us.

- d. Liability risk deters cooperation. Under the CPSIA, the CPSC has become a coercive enforcer of rules with little mercy or sense of proportion and no exercise of judgment. This environment certainly contributed to a lack of cooperation by component makers who won’t test for CPSIA compliance and subject themselves to CPSC persecution. Trust has been destroyed in so many ways.

Congress must restore to the CPSC the *responsibility* to assess risk. My top five recommendations are that:

1. The CPSC should be mandated to base its safety decisions, resource allocation and rules on risk assessment.
2. The definition of “Children’s Product” should be limited to children six years old and younger and the definition of “Toy” (for phthalates purposes) should be limited to children three years old or younger
3. Lead-in-substrate and phthalate testing should be based on the reasonable business judgment of the manufacturer, not mandated outside testing. Resellers should be entitled **by rule** to rely on the representations of manufacturers.
4. Mandatory tracking labels should be explicitly limited to long-life “heirloom” products with a known history of injuring the most vulnerable children, and

5. The public injury/incident database should be restricted to recalls or properly investigated incidents only. Manufacturers must be given full access to all posted incident data, including contact information.

In conclusion, I urge your committee to address the fundamental flaws in the CPSIA to restore order to the children's product marketplace and to protect small businesses from further damage.

I appreciate the opportunity to share my views here today and am happy to answer your questions.