

July 16, 2008

Dear Conferees,

Last October, 42 citizen, consumer and good government organizations signed a letter urging the Senate to support whistleblower protection in S. 2045, the CPSC Reform Act of 2007. Despite intense industry opposition, the Senate respected this mandate. With bi-partisan agreement the Senate adopted a strong whistleblower provision for enforcement of the law's stronger consumer protection standards.

There no longer are any credible objections to the Senate provision. To illustrate, last fall industry lobbyists insisted that protection was unnecessary, because there were no reported cases of retaliation. Reform proponents pointed out the obvious: that was largely unavoidable due to the absence of legal rights. Nonetheless, proponents presented a menu of cases from whistleblowers who filed suit even without rights. Among others, the examples included a quality control manager fired for challenging inferior materials in an infant stationery play center; a product designer fired for challenging light fixtures that flunked federal safety standards but were marketed without prior testing; a product engineer fired after challenging continued sales without corrective action of faulty home furnace ignition devices that already had caused a fire; and a wire company employee fired for reporting shipment of faulty wiring in smoke alarms. Similarly, industry lobbyists asserted a deluge of litigation would ensue, but the allegation had no credibility. It has been made for virtually every whistleblower shield enacted by Congress, and never has materialized to date in 36 preexisting whistleblower laws

After the attacks could not stand scrutiny, special interest opponents largely stopped making them, in public. We understand, however, that the pace of lobbying has intensified behind closed doors. It would be most unfortunate if this tactic worked. For one reason, the voters do not support it. A Democracy Corps survey of likely voters after the last election found whistleblower rights their second highest priority, chosen by 79%, only second to the related goal picked by 81% of ending illegal government spending.

That is understandable. Voters recognize that whistleblowers are the public's eyes and ears. As illustrated above, whistleblowers have confirmed repeated instances of companies refusing to disclose the full extent of adverse internal tests results to the government, or to institute recalls despite test results that confirmed a high likelihood of fatal injuries.

Last week an anonymous whistleblower contacted the Union of Concerned Scientists and the Government Accountability Project to urge that the final CPSC legislation contain whistleblower protection. The employee's experience is a microcosm of why that provision is, in the whistleblower's words, "indispensable" for companies to take the new standards seriously for any products self-regulated through internal testing. Otherwise, the conflicts of interest are too severe and the certain costs too great to delay production at the stage when testing normally occurs." That scenario is the rule, rather than the exception, for the 15,000 products covered by H.R. 4040/S 2045. GAP reports

that the employee's concerns are being distributed to conferee staff whose offices pledge to respect confidentiality even for a highly sanitized memorandum of concerns – the only conditions the employee would accept without rights.

The lesson to be learned is unavoidable. Even with greater resources, the CPSC cannot always enforce stronger safety standards unless employees have the legally-protected right to help enforce the law. In 2005 the House respected that principle by enacting “best practice” whistleblower rights in the Energy Policy Act. Last August, Congress proved it was serious about homeland security by passing best practice whistleblower rights for ground transportation employees. In January, Congress followed suit for defense contractors, despite the shrill objections from such powerful firms as Halliburton and Bechtel.

It would be unfortunate if Congress did not stand up to industry lobbyists on this bill who no longer can make their objections in public. America routinely depends on retail products that if defective could threaten our families many times every day. We urge you to protect those who are indispensable to enforce this law. It is unrealistic to expect that whistleblowers will defend the public if they can't defend themselves.

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**American Association of Law Libraries**

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**9/11 Research Project**

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**Doctors for Open Government**

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