

May 17, 2018

Dear Senators,

The undersigned consumer, health, safety, labor, civil rights and environmental organizations write to urge you to vote “no” on the nomination of Dana Baiocco to be a commissioner on the Consumer Product Safety Commission (CPSC).

Dana Baiocco has devoted her career to defending defective and dangerous products in lawsuits filed on behalf of people who were severely injured or killed by those products. She represented clients such as Yamaha—which manufactured recreational off-highway vehicles linked to multiple deadly roll-over accidents; Volkswagen—which cheated on emission standards; Mattel—which manufactured toys containing high levels of a potent neurotoxin, lead; and RJ Reynolds—a tobacco company that hid the known hazards of smoking for decades, and also waged a campaign to encourage people to feel “safe” smoking at home by promoting the extensive use of toxic flame retardant chemicals in mattresses and furniture.

During her November 1, 2017 hearing before the Senate Commerce Committee, when asked whether she would recuse herself from CPSC matters involving companies that she has defended against claims by injured or dead consumers, Ms. Baiocco *evaded basic conflict of interest questions and refused to agree to recuse herself, beyond what the office of government ethics recommended, from participating in matters that come before the CPSC involving her former clients or their dangerous products*. Her failure to recognize the connection between her clients and matters before the CPSC raises serious concerns about Ms. Baiocco’s commitment to consumer protection and ethical standards.

Consumers rely on the CPSC to protect the health and safety of their families, and they trust that the CPSC’s decision-making process will not be tainted by conflicts of interest. To ensure that consumers’ reliance and trust is well-placed, CPSC commissioners must comply with the same fundamental rules of ethics that are required of all government employees. This means that CPSC commissioners should recuse themselves from matters in which a reasonable person would question their impartiality. There is little doubt that reasonable people would question Ms. Baiocco’s impartiality when it comes to deciding the safety of products manufactured by companies she has vigorously defended in legal proceedings in order to deny compensation to their victims. Likewise, they would question her impartiality when it comes to considering the safety of products that are manufactured by companies her husband has defended in legal proceedings involving consumer deaths and injuries.¹

Parents and consumers should not have to question whether the safety of their household products has been compromised because one of the CPSC commissioners, or her husband, had a conflict-of-interest based on years of work, defending the products that CPSC is considering for regulation or recall.

Among the many critical matters that the CPSC will be asked to work on in the coming years is protecting children from toxic flame retardant chemicals. In mid-September 2017, the CPSC voted to begin the rulemaking process to ban the sale of four categories of consumer products if they contain any organohalogen flame retardant (known as OFRs). These toxic chemicals are found in the blood of 97% of people living in this country. In a recent guidance document,² the CPSC stated that the “known adverse health effects” of OFRs to consumers include:

reproductive impairment....; neurological impacts (e.g., decreased IQ in children, impaired memory, learning deficits, altered motor behavior, hyperactivity); endocrine disruption and interference with thyroid hormone action (potentially contributing to diabetes and obesity); genotoxicity; cancer; and immune disorders.

CPSC also found that OFRs “have a disproportionately negative health effect on vulnerable populations, including children.”

It is critically important that the next CPSC commissioner, at a minimum, have an open mind and not have conflicts regarding protecting children from the well-documented hazards of OFRs. The Chicago Tribune has documented an unholy alliance between the tobacco industry and chemical manufacturers to promote the extensive use of flame retardant chemicals in consumer products.³ **Given Ms. Baiocco’s work for R.J. Reynolds, she cannot impartially participate in the CPSC’s work relating to flame retardant chemicals in consumer products. Yet, Ms. Baiocco has refused to agree to recusing herself from such matters.**

The public deserves a CPSC commissioner who will uphold the mission of the agency and put consumer safety first. Ms. Baiocco should not be confirmed because she has not committed to recusing herself from matters in which her impartiality can reasonably be questioned, including work involving flame retardant chemicals in consumer products. We urge you to vote no on the nomination of Dana Baiocco to the CPSC.

Respectfully,

Alaska Community Action on Toxics
Alliance of Nurses for Healthy Environments
Breast Cancer Prevention Partners
Center for Environmental Health
Center For Food Safety
Citizens’ Environmental Coalition
Clean Production Action
Coming Clean
Commonweal Biomonitoring Resource Center
Earthjustice
Ecology Center
Empire State Consumer Project
Environmental Health Strategy Center

Environmental Working Group
Farmworker Association of Florida
Green Science Policy Institute
GreenBlue Institute
Headwater LLC
Health Care Without Harm
Healthy Babies Bright Futures
Healthy Building Network
Healthy Schools Network
International Center for Technology Assessment
League of Conservation Voters
League of United Latin American Citizens
Learning Disabilities Association of Illinois
Learning Disabilities Association of Maine
Learning Disabilities Association of Minnesota
Learning Disabilities Association of New Jersey
Learning Disabilities Association of Tennessee
Los Jardines Institute
National Hispanic Medical Association
Natural Resources Defense Council
Northwest Atlantic Marine Alliance
Northwest Green Chemistry
Safer Chemicals, Healthy Families
Safer States
Science and Environmental Health Network
Shaw Institute
Sierra Club
Union of Concerned Scientists
United Methodist Caretakers of God's Creation
Vermont Public Interest Research Group
Women's Voices for the Earth

¹ Federal law prohibits an employee from participating personally and substantially, in an official capacity, in any "particular matter" that would have a direct and predictable effect on the employee's own financial interests or on the financial interests of the employee's spouse. [18 U.S.C. § 208](#). In addition, an executive branch-wide regulation recognizes that a reasonable person may believe that an employee's impartiality can be influenced by interests other than the employee's own or those that are imputed to the employee by the conflict of interest laws, including interests of their spouse. *See* 5 C.F.R. § 2635.502.

² *Guidance Document on Hazardous Additive, Non-Polymeric Organohalogen Flame Retardants in Certain Consumer Products*, 82 Fed. Reg. 45,268 (Sept. 28, 2017).

³ Patricia Callahan & Sam Roe, *Big Tobacco wins fire marshalls as allies in flame retardant push*, May 8, 2012, available at <http://www.chicagotribune.com/ct-met-flames-tobacco-20120508-story.html>.