

**February 16, 2006**

**SCHAKOWSKY CONDEMNS BUSH ADMINISTRATION'S BACKDOOR ATTEMPTS TO STRIP CONSUMER RIGHTS**

**IN TWO LETTERS TO ADMINISTRATION, RAISES CONCERNS ABOUT NEW RULES WHICH LIMIT CONSUMERS' ACCESS TO COURTS**

WASHINGTON, DC - U.S. Representative Jan Schakowsky, ranking member on the Subcommittee on Commerce, Trade, and Consumer Protection, this week condemned the Bush Administration's attempts to strip consumers' rights and limit their access to the courts. Representative Schakowsky wrote to the commissioners of the Consumer Product Safety Commission to express her opposition to a new rule which would prevent consumers from suing manufacturers of flammable mattresses as long as those mattresses met a certain standard. She also wrote to President Bush to condemn similar rule changes at other agencies which limit consumers' access to the courts.

Both letters are below:

February 16, 2006

The Honorable George W. Bush  
President of the United States  
1600 Pennsylvania Avenue  
Washington, DC 20500-0003

Dear Mr. President:

I am writing to express my concern about several rule changes which have raised the possibility that the Administration is engaged in a backdoor effort to limit consumers' access to the court system. On multiple occasions, the Administration has proposed federal agency-level rule changes that would preempt state common laws and limit tort claims. Instead of submitting to Congress substantive policy recommendations, the Administration appears to be attempting to

limit consumers' rights through federal rule changes. Because I believe that these changes would be detrimental to consumer safety and usurp the prerogatives of Congress, I urge you to act immediately to direct federal agencies not to use the rulemaking process to restrict legal rights and preempt state laws.

Despite the fact that the issue of citizen access to legal remedies is outside of the expertise of most agencies, there has recently been a series of rulemakings that seek to restrict that access. The following are some examples of this new trend.

- 1) Today, the Consumer Product Safety Commission passed a rule change which would preempt state common laws and appears to have diverged from Commission precedent. The "Final Rule for Flammability of Mattress Sets" seeks to foreclose on statutory and common law tort claims as they apply to mattress safety because the Commission claims "a different standard or additional requirements imposed by state statutes or common law" would supposedly "upset (the) balance" between improving consumer safety and meeting the Commission's other statutory obligations. The preemption provisions in the rule's preamble were not present in the version of the rule that was considered during the public comment period.
- 2) Additionally, the National Highway and Transportation Safety Administration is considering a rule change which would provide legal immunity to auto manufacturers in cases involving defective roofs as long as those roofs meet the new federal roof durability standards.
- 3) Furthermore, the preamble of a drug labeling rule recently passed by the Food and Drug Administration also seeks to preempt state laws. According to an article in today's Washington Post, the FDA has intervened in a number of consumer cases filed under state laws against makers of drugs and medical companies, asserting that the companies should be protected from state laws because they followed federal rules.

Because multiple agencies are enacting rule changes which limit the access of consumers to the court system, it appears that there may have been an Administration-wide directive for agencies to promote tort reform through rule changes. While I understand that the industries affected by those rulemakings might want to limit their liability, I do not believe it is appropriate for agencies charged with protecting consumers to respond by slipping restrictions into their rulemakings. When so many agencies are understaffed and unable to enforce existing law, the private right of action is more important than ever in ensuring that unsafe practices and products are identified and kept out of the market. The preemption provisions listed above may have serious consequences, yet Congress has not been given the ability to even consider the implications.

Again, these rule changes raise questions about whether the Administration is exceeding its authority by preempting state laws in order to limit corporate liability through the rule-making process and without the consent of Congress. Limiting the private right of action of consumers is a significant policy change with broad legal implications that should be considered in the transparent legislative process. If your Administration is seeking to limit corporate liability and block access to state courts for consumers seeking redress for harm they have suffered, you

should present your proposal to Congress.

I thank you for your consideration of this issue. Please feel free to contact me to discuss this further.

Sincerely,

Jan Schakowsky  
Member of Congress

February 15, 2006

Honorable Chairman Stratton  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

Dear Chairman Stratton:

As the Ranking Member of the Energy and Commerce Committee's Subcommittee of Commerce, Trade, and Consumer Protection, I am very concerned about language regarding the preemption of state common law remedies that was included in the Draft Final Rule for Flammability of Mattress Sets (Draft Final Rule) made available to the public on February 2, 2006. Although the placement of the language in the preamble of the Draft Final Rule affords it no force of law, I find the comments to be beyond the scope of the Consumer Product Safety Commission's (Commission) jurisdiction and to be contrary to its mission of protecting the public from unreasonable risk from consumer products. Because this language was not included in the draft ruling that was put out for public comment, I urge the Commission to forestall further action on the Draft Final Rule until questions that have been raised concerning the insertion of this language have been adequately answered. The addition of that language appears to be part of an unfortunate and troublesome pattern of Administration efforts to undermine consumer rights through the agency rulemaking process. Moreover, this proposed rule change raises questions about whether the Administration is overstepping its authority in a backdoor attempt to limit access to the courts.

I appreciate that the Commission, after the urging of my Committee and the Senate Committee on Commerce, Science, and Transportation, has moved to finalize rules for mattress and

bedding flammability. According to the Commission's data, mattresses or mattress bedding were the first items to ignite in 15,300 residential fires. Those fires resulted in property losses of \$295 million and caused 350 deaths and 1,750 injuries between 1999-2002. However, it is not clear that the preemption of state common laws will "improve consumer safety and meet the Commission's other statutory obligations" in regards to mattress flammability as the Commission states in the Draft Final Rule preamble. In order to better understand the Commission's position, I would like you to provide me with the materials or answers requested below.

1. I would like copies of all memoranda and directives from the White House and Department of Justice that may have contributed to the Commission's stated position recommending the preemption of state common laws.
2. I would like the records of all the staff names and titles, amount of staff time, and staff work products that were used in formulation of the stated position in the preamble. Please include all staff analyses on the issue.
3. I would like all copies of correspondence with state governments, including any request for comments by the CPSC to the states and comments received during the public comment period concerning the Draft Final Rule.
4. I would like an explanation of what the Commission did to consult with local and state governments before promulgating rules that would substantially impact them.
5. I would like an explanation of why the preemption of state common laws was not included in the draft rulemaking that was sent out for public comment. It is my desire to see strong mattress and bedding flammability standards set in place as soon as possible. Therefore, I request that the Commission respond to our inquiries by February 28, 2006. If you have any questions, please feel free to contact me. I look forward to your timely response. Sincerely,

Jan Schakowsky  
Ranking Member  
Commerce, Trade, and Consumer Protection  
Subcommittee

Cc: Honorable Commissioner Moore, U.S. Consumer Product Safety Commission  
Honorable Commissioner Nord, U.S. Consumer Product Safety Commission  
Chairman Joe Barton, Energy and Commerce Committee  
Ranking Member John Dingell, Energy and Commerce Committee  
Chairman Cliff Stearns, Commerce, Trade, and Consumer Protection Subcommittee