

United States Court of Appeals  
for the Fourth Circuit

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MARY BOYLE, ALEXANDER HOEHN-SARIC, AND RICHARD TRUMKA, JR.,

*Plaintiffs-Appellees,*

v.

DONALD J. TRUMP, ET AL.,

*Defendants-Respondents.*

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On Appeal from the United States District Court for the District of Maryland

No. 8:25-cv-01628-MJM

Hon. Matthew J. Maddox, United States District Judge

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**BRIEF OF CONSUMER FEDERATION OF AMERICA, CONSUMER  
REPORTS, AMERICAN ACADEMY OF PEDIATRICS, CENTER FOR  
CONSUMER LAW & ECONOMIC JUSTICE, NATIONAL ASSOCIATION  
OF CONSUMER ADVOCATES, NATIONAL CENTER FOR HEALTH  
RESEARCH, AND NATIONAL CONSUMERS LEAGUE AS  
AMICI CURIAE IN SUPPORT OF APPELLEES**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Civil Procedure 26.1(a), the undersigned counsel states that the following amici curiae have no parent corporations, and no publicly held corporation owns 10% or more of its stock:

- Consumer Federation of America
- Consumer Reports
- American Academy of Pediatrics
- Center for Consumer Law & Economic Justice
- National Association of Consumer Advocates
- National Center for Health Research
- National Consumers League

Dated: August 29, 2025

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## **INTERESTS OF AMICI CURIAE<sup>1</sup>**

Amici curiae Consumer Federation of America, Consumer Reports, American Academy of Pediatrics, Center for Consumer Law & Economic Justice, National Association of Consumer Advocates, National Center for Health Research, and National Consumers League are non-profit organizations dedicated to protecting consumers from dangerous and unsafe products. Each has a strong interest in defending the independence of the Consumer Product Safety Commission (CPSC), including its statutory for-cause removal protections for commissioners. As leading advocates for strong consumer-focused product safety policies, amici curiae offer a distinct perspective from organizations that daily represent consumers across the country who depend on CPSC's independent oversight.

Individual statements of interest are in the Appendix.

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<sup>1</sup> No counsel for any party authored this brief in whole or in part, and no person other than amici curiae, their members, and their counsel made a monetary contribution to the preparation or submission of this brief. Fed. R. App. P. 29(a). All parties consented to the filing of this brief. *Id.*

## **INTRODUCTION**

Every day, American families trust that the products they bring into their homes—from cribs for newborns, to toys for children, to bed rails for elderly loved ones—will not harm them. This fundamental expectation of safety exists in large part because Congress, confronted with a national crisis of 20 million annual product-related injuries and 30,000 deaths, constituted the Consumer Product Safety Commission (CPSC) in 1972 as an independent agency insulated from political interference. *See* Consumer Product Safety Act (CPSA), Pub. L. 92-573, 86 Stat. 1207 (1972), *enacted at* 15 U.S.C. § 2051 *et seq.* In providing for only for-cause removal, Congress made a clear and deliberate choice: the Commission’s actions intended to “protect the public against unreasonable risks of injury associated with consumer products,” 15 U.S.C. § 2051(b)(1), must be made by expert commissioners protected from the political process, not by officials subject to the partisan aims of any administration. *See id.* § 2053(a). That choice is wholly compatible with the separation of powers.

Congress’s decision to shield CPSC’s leadership from untrammelled presidential removal was a carefully crafted safeguard born of tragic necessity. Before Congress established the CPSC, dangerous household consumer products

were killing three Americans every hour.<sup>2</sup> This public health crisis was the result of failed industry self-regulation and woefully inadequate federal oversight.

The National Commission on Product Safety (NCPS), an advisory committee that Congress created and tasked with studying consumer product hazards, concluded that only an independent agency with commissioners serving fixed terms subject to removal only for cause could provide the “cold neutrality” essential for protecting the public from corporate interests that prioritized profits over safety.<sup>3</sup> Lawmakers acted on the NCPS’s recommendation and barred removal of the five CPSC commissioners—including Plaintiffs—by the President but for “neglect or malfeasance in office.” 15 U.S.C. § 2053(a).

The CPSC’s fifty-year track record validates Congress’ wisdom. Operating independently, the agency has transformed product safety and has been the world’s leader with its mandatory standards, enforcement actions, evidence-driven research, and public education campaigns that have prevented countless deaths and injuries. Americans of all ages, from infants to children to adults to senior citizens, have been protected by the CPSC’s expert-driven safety standards on all sorts of products. These achievements required an unwavering commitment from

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<sup>2</sup> NATIONAL COMM’N ON PROD. SAFETY, FINAL REPORT TO THE PRESIDENT AND CONGRESS 9 (1970).

<sup>3</sup> H.R. REP. NO. 92-1593, 25 (1972).

commissioners willing to withstand intense industry pressure and political opposition, something only possible with for-cause removal protection.

Nearly a century's worth of precedent from the U.S. Supreme Court supports the proposition that "[t]he authority of Congress . . . includes power . . . to forbid the[] removal except for cause" of officers of independent agencies like the CPSC. *Humphrey's Executor v. FTC*, 295 U.S. 602, 630 (1935). The removal protections for CPSC commissioners makes plain Congress's understanding that evidence-based safety decisions require insulation from the political pressures that unlimited removal power inevitably creates. *See id.* at 629 ("[O]ne who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will.").

If the CPSC's longstanding tenure protections are struck down and commissioners are subject to removal at any time, the careful balance Congress struck between safety, economic, and other considerations would collapse and increase the likelihood that partisan calculations will override safety data and evidence. Such an outcome betrays Congress's deliberate constitutional design and undermines lawmakers' intent to protect the American public from preventable harm. The lives of Americans—like 3-year-old Meghan Amato who died when a dresser tipped over onto her, Harry Griph, Sr. who at 75 years old was asphyxiated in his own bed by defective bed rails, and countless others whose tragedies could

have been prevented through independent regulation—depend on preserving the CPSC’s ability to prioritize evidence-based safety decisions free from political influence.

The judgment of the district court should be affirmed.

### **ARGUMENT**

Faced with a monumental crisis of deaths and injuries caused by harmful consumer products, Congress established the CPSC and protected its five commissioners from at-will removal in order to shield them from political processes and industry influence. That decision is fully compatible with the separation of powers and Article II. *See, e.g., Magnetsafety.org v. CPSC*, 129 F.4th 1253, 1265-66 (10th Cir. 2025) (affirming the constitutionality of the CPSA’s removal protections); *Leachco, Inc. v. CPSC*, 103 F.4th 748, 763 (10th Cir. 2024) (same); *Consumers’ Rsch. v. CPSC*, 91 F.4th 342, 355 (5th Cir. 2024) (same). The independence of the CPSC was a crucial element in the original legislative debate because of the necessity to prioritize institutional expertise on the subject of product safety. The past fifty years of robust product safety standards on products as varied as lead-based paint, unstable furniture, and portable bedrails bears out the promise that agency independence offers. Moreover, respecting Congress’s deliberate choice is essential to both the foundational principles of separation of

powers as well as to the health and safety of millions of Americans who depend on commissioners who can prioritize safety and expertise over partisan goals.

**I. CONGRESS INSTITUTED FOR-CAUSE REMOVAL PROTECTIONS FOR THE CPSC TO ENSURE THE AGENCY COULD ADOPT DURABLE, EXPERT-DRIVEN STANDARDS.**

Tenure protections for CPSC commissioners serve a crucial purpose: to safeguard the independent judgment of expert officials charged by Congress to investigate and regulate products that pose unreasonable harm to the public. By the late 1960s, a national crisis was unfolding in American homes as dangerous consumer products wreaked havoc on families across the country. An estimated 20 million Americans were injured annually by consumer products seriously enough to require medical treatment and disable them for a day or more, with 110,000 left permanently disabled and 30,000 killed.<sup>4</sup> The human cost was particularly devastating for the nation's most vulnerable population: approximately 7,000 children under 15 died annually in home accidents that could have been avoided.<sup>5</sup> Prior to the creation of the CPSC, Americans faced greater dangers in their own homes than when driving on highways.<sup>6</sup> A pattern of industry negligence and

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<sup>4</sup> NATIONAL COMM'N ON PROD. SAFETY, *supra* note 2, at 1-3, 9.

<sup>5</sup> *Id.* at 9.

<sup>6</sup> *Id.*

regulatory failure resulted in preventable deaths and injuries that threatened every American family, turning the most basic acts of daily life into potential death traps.

Against this backdrop of widespread harm to Americans, Congress designed the CPSC and determined, based on an independent assessment, that its commissioners must remain insulated from political influence. In March 1968, Congress authorized the National Commission on Product Safety (NCPS) and directed it to conduct a comprehensive study of the “bona fide and menacing” threat of hazardous consumer products. Pub. L. 90-146 (1967).<sup>7</sup> At the time, product safety regulations in the United States were fragmented, with federal legislation targeting only specific goods with limited oversight.<sup>8</sup> The NCPS made several critical findings that would shape the structure of the future CPSC. It identified “no justification for exposing an entire populace to risks of injury or death.”<sup>9</sup> It concluded that industry alone would not protect the American public against unreasonable risks, and that “in the absence of external compulsion it is predictable that there will continue to be an indecent time lag between exposure to a hazard and its elimination.”<sup>10</sup>

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<sup>7</sup> *Id.* at vii.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at vii-viii.

<sup>10</sup> *Id.* at viii.



Critically, the NCPS recommended the establishment of a CPSC that was independent from presidential at-will removal.<sup>11</sup> The NCPS reasoned that only an agency dedicated exclusively to consumer product safety could adequately address the broad scope and rapid evolution of safety hazards. The NCPS specifically identified a “lack of vigor in enforcing the law caused by an absence of authority and independence in some Federal administrators.”<sup>12</sup>

Based on this analysis, the NCPS called for a commission independent from the political process. “When a Federal agency must take up substantial and controversial issues of consumer safety and economics, we believe it needs independent status.”<sup>13</sup> To this end, the NCPS emphasized that “[i]ndependence can be furthered by appointment of commissioners on a nonpartisan basis, for staggered fixed terms subject to removal only for cause.”<sup>14</sup>

A few years later, Congress adopted the recommendations of NCPS and enacted the Consumer Product Safety Act in order “to protect the public against unreasonable risks of injury associated with consumer products” and “to assist consumers in evaluating the comparative safety of consumer products.” *CPSC v.*

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<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

*GTE Sylvania, Inc.*, 447 U.S. 102, 104 (1980) (quoting 15 U.S.C. §§ 2052(b).) As then-chair of the Administrative Office of the Courts Antonin Scalia identified, Congress acknowledged the NCPS’s findings that 20 million Americans “were injured each year in the home as a result of accidents connected with consumer products” and “that industry self-regulation, the common law, existing federal programs, and state and local agencies were inadequate to protect the public from this excessive hazard.”<sup>15</sup> Congress created the CPSA as a means to supply “uniform safety standards,” 15 U.S.C. § 2051(b)(3), given that a patchwork of state and local laws could be “burdensome to manufacturers,” *id.* § 2051(a)(4). The CPSC was also intended to reshape the consumer product marketplace to prioritize safety to the public over costs to the manufacturers. “One of the primary motivations for the enactment of CPSA was the perceived failure of the market mechanism to reflect adequately the costs of injuries associated with consumer products and thus provide the incentive necessary if industry were to improve product safety without government regulation.” *ASG Indus., Inc. v. CPSC*, 593 F.2d 1323, 1337 (D.C. Cir. 1979).

When establishing the CPSC, Congress made clear that it viewed independence as essential to effectuating the agency’s statutory purpose.

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<sup>15</sup> Antonin Scalia & Frank Goodman, *Procedural Aspects of the Consumer Product Safety Act*, 20 UCLA L. REV. 899, 900- 901 (1973).

Lawmakers explicitly rejected proposals that would have placed the agency under direct executive department control, instead choosing a structure designed to maximize consumer safety. That choice to enact for-cause removal procedures for expert agencies like the CPSC was already well-accepted and ratified by the Supreme Court. *See Humphrey's Executor*, 295 U.S. at 631-32; *Leachco*, 103 F.4th at 760 (noting that “[i]ndependent agencies date back to at least 1887”). Congress structured the CPSC as a five-member bipartisan commission with staggered seven-year terms with no more than three commissioners belonging to the same political party. 15 U.S.C. §§ 2053(a)-(c).

Congress also enacted multiple unique provisions specifically designed to shield the CPSC from presidential interference. First, while other independent agency statutes permit removal for inefficiency, neglect of duty, or malfeasance, the CPSA, permits removal only for “neglect of duty or malfeasance in duty.” *See* 15 U.S.C. § 2053(a).<sup>16</sup> This deliberately narrower provision that omits “inefficiency” served as a “concrete expression of the importance Congress attached to protecting the Commission’s independence.”<sup>17</sup> It can thus be inferred that Congress sought, among all independent agencies, to particularly shield the

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<sup>16</sup> Wendy Lee Gould, Note, *The Consumer Product Safety Act: Bold New Approaches to Regulatory Theory*, 5 LOY. U. CHI. L.J. 447, 465 (1974).

<sup>17</sup> Scalia & Goodman, *supra* note 15, at 904; Gould, *supra* note 16, at 465.

CPSC from partisanship. Second, the CPSA allowed the presidentially appointed chairman to serve in that role for the duration of his term as commissioner, unlike other independent agencies wherein the chair serves at the President's pleasure.<sup>18</sup> Third, the CPSA further insulated the agency's leadership by allowing the Commission, not the President, to elect a vice-chairman.<sup>19</sup> Finally, the CPSA barred any officer or agency from requiring the Commission to submit legislative recommendations, testimony, or comments for executive review, and it required the Commission to transmit budget requests to Congress as well as the President or OMB.<sup>20</sup>

Legislative history evinces Congress's concern with organizing the Commission to be independent from industry pressures. *Cf. GTE Sylvania*, 447 U.S. at 110-113 (conducting a "full examination of [the CFSA's] legislative history" to assess industry privacy protections adopted). When lawmakers crafted the CPSC, its status as an independent agency was central to the debate.<sup>21</sup> Both the Senate Commerce Committee and the House Subcommittee on Commerce and Finance held extensive hearings over two competing bills—one that adopted NCPS

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<sup>18</sup> Gould, *supra* note 16, at 464-65.

<sup>19</sup> *Id.* at 465.

<sup>20</sup> *Id.* at 465-66.

<sup>21</sup> David M. Pantalena, *Note, Congress on the Consumer Bandwagon: The Consumer Product Safety Act of 1972*, 22 CATH. U. L. REV. 847 (1973).

recommendations for an independent agency, and alternative bill favored by the Nixon administration that proposed a different structure.<sup>22</sup> The 1972 House Committee on Interstate and Foreign Commerce Report on the relevant bill (H.R. 15003) outlined the reasons for adopting the NCPS's recommendation to establish an independent agency.<sup>23</sup> The Committee determined that "an independent agency can better carry out the legislative and judicial functions contained in this bill with the cold neutrality that the public has a right to expect of regulatory agencies formed for its protection."<sup>24</sup> The Committee recognized the "delicate balance" that the agency would have to strike when regulating consumer products that blend "safety and economic considerations," and determined this balancing "should be done in a setting as far removed as possible from partisan influence."<sup>25</sup>

Unrestricted presidential removal power would directly undermine the structural independence that Congress determined was essential for effective public

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<sup>22</sup> The Senate Commerce Committee began hearings comparing two competing bills: Senator Magnuson's bill (S. 938), which adopted NCPS recommendations for an independent agency, and the bill favored by the Nixon Administration (S. 1797), which proposed a different structure. *See* Pantalena, *supra* note 21, at 848-49. *See also* *Hearings on S. 3419 Before the Subcomm. on Health of the Senate Comm. on Labor and Public Welfare*, 92d Cong., 2d Sess. (1972). The final vote in the Senate was 69-10. 188 CONG. REC. 9932 (daily ed., June 21, 1972).

<sup>23</sup> H.R. REP. NO. 92-1593 (1972).

<sup>24</sup> *Id.* at 24-55.

<sup>25</sup> *Id.* at 25.

safety and consumer protection. For-cause removal serves critical functions: it enables commissioners to make unpopular but necessary safety decisions, and provides regulatory stability for industry and consumers alike, regardless of political pressures. Absent the protection of for-cause removal limitations, commissioners would face constant pressure to subordinate public safety to political or economic considerations, fundamentally undermining the congressional purpose for creating an independent consumer protection agency in the first place.

## **II. AN INDEPENDENT CPSC IS BETTER EQUIPPED TO ADDRESS EVOLVING CONSUMER PRODUCT SAFETY NEEDS AND WITHSTAND INDUSTRY INFLUENCE.**

The past fifty years of product safety successes, engendered by the CPSC's standards, serve as a proof of concept of the importance of maintaining expert agencies like the CPSC, independent from political sway. Protection from at-will removal has helped the Commission withstand well-organized industry pressure and focus on its core mission—using its independent expertise to protect the public from dangerous products. Eliminating crucial removal protections will likely undercut these successes and put millions of Americans' lives at risk.

### **A. An Independent CPSC Banned Lead Paint In Children's Toys Despite Industry Pushback.**

A CPSC that is unrestrained by political influence was crucial to the elaboration of one of the first and most famous product safety standards: a national ban on lead-based paint. Up until the 1970s, fierce industry resistance limited

federal action on lead paint, especially in children's products, despite mounting and troubling evidence of the dangers associated with lead.<sup>26</sup> While a few local jurisdictions attempted regulation, the paint industry successfully lobbied against comprehensive federal standards and employed an effective strategy of blaming parents who “failed to stop children from placing their fingers and toys in their mouth.”<sup>27</sup> “Children poisoned by lead, the industry claimed, had a disease that led them to suck on ‘unnatural objects’ and thereby get poisoned.”<sup>28</sup> Manufacturers also managed to persuade political officials in cities from impose restrictions.<sup>29</sup> Their targeted strategy proved quite successful in rebuffing any lead paint bans—and resulted in a generation of children exposed to this poison in unregulated amounts, potentially suffering permanent neurological damage or even death.

The independent CPSC, however, meant that it could remain insulated from industry opposition, and in 1978 the Commission managed to successfully implement the first comprehensive federal ban on residential use of lead-based

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<sup>26</sup> NATIONAL COMM’N ON PROD. SAFETY, *supra* note 2, at 35; *see also* David Rosner & Gerald Markowitz, *Why It Took Decades of Blaming Parents Before We Banned Lead Paint*, The Atlantic (Apr. 22, 2013), <https://www.theatlantic.com/health/archive/2013/04/why-it-took-decades-of-blaming-parents-before-we-banned-lead-paint/275169/>.

<sup>27</sup> Rosner & Markowitz, *supra* note 26.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

paint in consumer products. The ban prohibited all toys and furniture coated with paint containing more than 0.06% (600 parts per million) lead by weight. *See* CPSC, Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead Containing Paint, 16 C.F.R. § 1303 (1978). The CPSC’s independence allowed the CPSC to prioritize the safety of children and families over political interests. This lead paint ban persists to this day and remains one of the most successful product safety standards, despite industry actors’ contrary attempts.<sup>30</sup>

The centrality of expertise and independent judgment removed from political and industrial pressure has also ensured that the CPSC can remain responsive to increasingly complex safety challenges, industry resistance, and the need to regulate emerging product categories. In 2007, a cascade of recalls due to excessive lead levels in children’s toys<sup>31</sup> caused Congress to enact the Consumer

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<sup>30</sup> Rosner & Markowitz, *supra* note 27; *see also* Perry Gottesfeld, *Lead Industry Influence in the 21st Century: An Old Playbook for a “Modern Metal”*, 112 Am. J. Pub. Health S723 (2022).

<sup>31</sup> Among these recalls included Mattel’s recall of three million toys for excessive lead paint; Toys “R” Us offering refunds for one million baby bibs with excessive lead; Target and RC2 recalling 555,000 Chinese-made toys after all eleven tested samples showed high lead content; RC2 and five other companies recalling 670,000 children’s toys and furniture; the U.S. government recalling 544,000 Chinese-made children’s toys including key chains and toy mugs; 1.5 million Chinese-made Boy Scouts badges recalled for excessive lead levels, and the CPSC ordering recall of 43,000 fake “ugly teeth” packages containing one hundred times the allowable lead level, with more than thirteen million toys recalled in September and October 2007 alone due to excess lead level. *See* Gabriel Allen, Note, *Get the*



Product Safety Improvement Act of 2008 (CPSIA). Pub. L. No. 110-314, 122 Stat. 3016. The CPSIA dramatically lowered permissible lead content in paint and surface coatings to 0.009% (90 parts per million) and established strict total lead limits for accessible parts of children's toys, while also mandating third-party laboratory testing and certification for toys.

The CPSIA's implementation required sustained regulatory commitment that only independent commissioners could provide. Industry groups challenged the new standards as overly stringent, arguing for weaker alternatives that would continue to leave children at risk.<sup>32</sup> Manufacturers even dubbed February 9, 2009, the day that the CPSC's new lead restrictions went into effect, as "National Bankruptcy Day."<sup>33</sup> Of course, no toy manufacturers went bankrupt as a result of the regulations meanwhile, while thousands of children's lives were saved and injuries prevented. Nevertheless, lead exposure continues, as recent product recalls demonstrate, which warrants ongoing vigorous enforcement by the CPSC unconstrained by political pressures.<sup>34</sup>

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*Lead Out: A New Approach for Regulating the U.S. Toy Market in a Globalized World*, 36 GA. J. INT'L & COMP. L. 615, 617-18 (2008).

<sup>32</sup> Eileen Flaherty, *Safety First: The Consumer Product Safety Improvement Act of 2008*, 21 LOY. CONSUMER L. REV. 372, 387-90 (2009).

<sup>33</sup> *Id.*

<sup>34</sup> See U.S. CONSUMER PROD. SAFETY COMM'N, *SPPTTY Kids Bicycles Recalled Due to Risk of Death or Injury from Lead Poisoning; Violates Federal Lead Content Ban; Sold at Walmart by Shenzhen Yihuachuang Technology* (July 10,

The transformation from industry blame-shifting to comprehensive federal protection occurred in part because independent commissioners could prioritize children's safety and neurological development over political and economic interest. Invalidating the CPSC's removal protections could erase many of these modern successes.

**B. An Independent CPSC Has Implemented Critical Safety Standards To Protect Children From Heavy Furniture Tip-Overs Despite Industry Pushback.**

The modern issue of furniture tip-overs also demonstrates why the CPSC must remain an independent agency focused solely on consumer safety and not beholden to political interests. Beginning in the 1980s and accelerating through the 2000s, more furniture used in the United States was produced overseas, often resulting in more cheaply made and lighter units.<sup>35</sup> From 2000 to 2022, at least 234

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2025), <https://www.cpsc.gov/Recalls/2025/SPPTTY-Kids-Bicycles-Recalled-Due-to-Risk-of-Death-or-Injury-from-Lead-Poisoning-Violates-Federal-Lead-Content-Ban-Sold-at-Walmart-by-Shenzhen-Yihuachuang-Technology>; U.S. CONSUMER PROD. SAFETY COMM'N, *Boyro Baby Walkers Recalled Due to Risk of Serious Injury or Death to Children from Fall Hazard; Violations of the Federal Standard for Infant Walkers and Lead Content Ban; Sold Exclusively on Amazon.com* (June 26, 2025), <https://www.cpsc.gov/Recalls/2025/Boyro-Baby-Walkers-Recalled-Due-to-Risk-of-Serious-Injury-or-Death-to-Children-from-Fall-Hazard-Violations-of-the-Federal-Standard-for-Infant-Walkers-and-Lead-Content-Ban-Sold-Exclusively-on-Amazon-com>. See also Paul Allwood et al., *Recently Recalled Children's Products Due to Lead Hazards*, 154 PEDIATRICS (Supp. 2024), <https://publications.aap.org/pediatrics/article/154/Supplement%202/e2024067808P/199572/Recently-Recalled-Children-s-Products-Due-to-Lead>.

<sup>35</sup> Elizabeth Brotherton-Bunch, *How Offshoring Helped to Create the Fast Furniture Problem*, Alliance for Am. Manufacturing (Oct. 31, 2022),

people died from furniture tip-overs, where unstable dressers or similar units fall over and crush people, including nearly 200 children.<sup>36</sup> Furniture tip-overs sent six children to the emergency room every day, and killed one child every two weeks.<sup>37</sup> As one family described the deadly incident that took the life of 2 year old Jozef Dudek, after his parents put him down for a nap in 2017:

He must have gotten up at some point and went over to an Ikea three-drawer Malm dresser that was in his room and pulled the dresser onto him[.] His father came in and found him with his head in between the middle drawer and the top drawer. And Jozef was asphyxiated to death.<sup>38</sup>

Another parent advocate, Kimberly Amato, described her family's tragic ordeal with furniture tip-overs:

[O]n Dec. 18, 2004, I woke to every parent's nightmare. My beautiful 3-year-old daughter Meghan was found lifeless beneath her dresser. It had fallen on her sometime in the night while the rest of the family was asleep. We did not hear it fall, as it fell on her tiny body

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<https://www.americanmanufacturing.org/blog/how-offshoring-helped-to-create-the-fast-furniture-problem/>.

<sup>36</sup> Joe Hernandez, *Consumer Safety Regulators Adopt New Rules to Prevent Dresser Tip-Overs*, NPR (Apr. 26, 2023), <https://www.npr.org/2023/04/26/1172027172/dresser-tipover-children-consumer-safety>.

<sup>37</sup> *Id.*

<sup>38</sup> Merrit Kennedy, *Ikea Reaches \$46 Million Settlement Over Death Of Toddler Killed By Dresser Tip-Over*, NPR (Jan. 7, 2020), <https://www.npr.org/2020/01/07/794281632/ikea-reaches-46-million-settlement-over-death-of-toddler-killed-by-dresser-tip-o>.

on a carpeted floor. She was unable to cry, her airway crushed by a drawer under the weight of the dresser.<sup>39</sup>

For decades, furniture manufacturers resisted meaningful, binding safety standards, favoring weaker and ineffective voluntary guidelines that left millions of unstable units in American homes.<sup>40</sup> In 2022, CPSC and its technical staff published robust safety rules after years of failed negotiations with industry.<sup>41</sup> The same year, Congress passed new mandatory requirements in the bipartisan Stop Tip-Overs of Unstable, Risky Dressers on Youth (STURDY) Act. Pursuant to authority under that law, CPSC adopted a mandatory furniture standard.<sup>42</sup> The protracted battle to implement meaningful furniture stability requirements, despite the death of hundreds of children, demonstrates that voluntary standards, often

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<sup>39</sup> Kimberly Amato, *My daughter should have been the last child to die from a furniture tip-over*, USA TODAY (Sept. 4, 2020), <https://www.usatoday.com/story/opinion/voices/2020/09/04/furniture-tip-over-children-child-safety-fall-column/5702084002/>.

<sup>40</sup> Rachel Rabkin Peachman, *Furniture Tip-Overs: A Hidden Hazard in Your Home*, Consumer Reports (March 22, 2018), <https://www.consumerreports.org/home-garden/furniture/furniture-tip-overs-hidden-hazard-in-your-home-a2683907691/>.

<sup>41</sup> Safety Standard for Clothing Storage Units, 87 Fed. Reg. 72,598 (Nov. 25, 2022).

<sup>42</sup> Safety Standard for Clothing Storage Units, 88 Fed. Reg. 28,403 (May 4, 2023) (to be codified at 16 C.F.R. pt. 1261). *See also* Lauren Kirchner, *The STURDY Act to Prevent Furniture Tip-Overs Is Going Into Effect Soon*, Consumer Reports (Aug. 25, 2023), <https://www.consumerreports.org/home-garden/furniture-tip-over/sturdy-act-to-prevent-furniture-tip-overs-going-into-effect-a1913032274/>.

shaped by manufacturers, can be inadequate and strong mandatory rules only come about when CPSC can act independently and withstand political pressure.

**C. An Independent CPSC Has Adopted Adult Bed Rails To Protect Seniors Despite Industry Pushback.**

The CPSC's long-term work on adult portable bed rails further demonstrates how independent regulatory authority enables public safety against entrenched resistance. Between January 2003 and December 2021, the CPSC identified 284 fatalities and an estimated 79,500 injuries treated in hospital emergency departments related to adult portable bed rails.<sup>43</sup> Vulnerable populations, such as elderly individuals with dementia, Parkinson's disease, and mobility impairments, faced the greatest risk because they could not free themselves from entrapment.<sup>44</sup> Paradoxically, caregivers purchased portable adult bed rails as safety devices for their family and loved ones.<sup>45</sup> In one tragic event, 75-year-old Harry Griph, Sr. was found on Christmas morning with his neck entrapped between the mattress or bed frame and the rail, having asphyxiated.<sup>46</sup>

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<sup>43</sup> Safety Standard for Adult Portable Bed Rails, 88 Fed. Reg. 46,958, 46,960 (July 21, 2023) (codified at 16 C.F.R. § 1270).

<sup>44</sup> *Id.*

<sup>45</sup> Gloria Black et al., Petition to the Consumer Product Safety Commission to Ban Adult Portable Bed Rails (Apr. 25, 2013), <https://www.cpsc.gov/s3fs-public/pdfs/AdultPortableBedrailPetition.pdf>.

<sup>46</sup> Paula Span, *Safe in Bed?*, N.Y. Times: New Old Age Blog (Mar. 10, 2010), <https://archive.nytimes.com/newoldage.blogs.nytimes.com/2010/03/10/safe-in-bed/>.

Despite this mounting evidence of egregious harm and the fact that these horrible deaths were completely avoidable, industry operated for years without meaningful safety standards.<sup>47</sup> In 2013, dozens of consumer advocacy groups petitioned the CPSC to address this unreasonable risk, documenting the ongoing crisis.<sup>48</sup> Rather than taking immediate action, industry successfully delayed the promulgation of a mandatory standard, instead promising to develop voluntary standards.<sup>49</sup> Even after the 2017 voluntary standard was published, though, industry demonstrated systematic non-compliance with their own voluntary standard, meaning that bed rail risks could only be addressed through independent regulatory action.<sup>50</sup> In 2023, the Commission promulgated a final rule establishing mandatory federal standards, codified at 16 C.F.R. § 1270.

The history of adult bed rails demonstrated why independence from unlimited presidential removal power is essential for effective public safety and consumer protection. The decade-long struggle to implement standards required sustained regulatory commitments maintained by commissioners insulated from political pressure.

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<sup>47</sup> 88 Fed. Reg. at 46,960.

<sup>48</sup> Black et al., *supra* note 45.

<sup>49</sup> 88 Fed. Reg. at 46,960.

<sup>50</sup> *Id.*

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The evolution of product safety challenges over the past fifty years illustrates why the CPSC's independence becomes more, not less, critical over time. These achievements represent significant victories for public safety, but they also demonstrate that the CPSC's work is never complete. Each success story required years of sustained regulatory effort, often in the face of fierce industry opposition and political pressure. Modern products are increasingly complex, incorporating new technologies and materials that create previously unknown hazards. Online marketplaces and third-party sellers,<sup>51</sup> digital connectivity,<sup>52</sup> artificial intelligence,<sup>53</sup> and sophisticated manufacturing processes generate safety

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<sup>51</sup> U.S. CONSUMER PRODUCT SAFETY COMM'N, *CPSC Finds Amazon Responsible Under Federal Safety Law for Hazardous Products Sold by Third-Party Sellers on Amazon.com* (July 30, 2024), <https://www.cpsc.gov/Newsroom/News-Releases/2024/CPSC-Finds-Amazon-Responsible-Under-Federal-Safety-Law-for-Hazardous-Products-Sold-by-Third-Party-Sellers-on-Amazon-com>; Courtney Griffin & Ann-Katrin Hamacher, *Unsafe and Online: A Framework for Strengthening Product Safety in the Online Marketplace*, Transatlantic Consumer Dialogue (May 2025), <https://tacd.org/unsafe-and-online-transatlantic-consumer-groups-call-for-stronger-regulation-of-online-marketplaces-amid-surge-in-unsafe-products/>.

<sup>52</sup> Elliot F. Kaye & Jonathan D. Midgett, *A Framework of Safety for the Internet of Things: Considerations for Consumer Product Safety*, U.S. CONSUMER PRODUCT SAFETY COMM'N (Jan. 31, 2019), [https://www.cpsc.gov/s3fs-public/A\\_Framework\\_for\\_Safety\\_Across\\_the\\_Internet\\_of\\_Things\\_1-31-2019.pdf](https://www.cpsc.gov/s3fs-public/A_Framework_for_Safety_Across_the_Internet_of_Things_1-31-2019.pdf).

<sup>53</sup> Nevin J. Taylor, *Artificial Intelligence and Machine Learning In Consumer Products*, U.S. CONSUMER PRODUCT SAFETY COMM'N (May 19, 2021), <https://www.cpsc.gov/s3fs->

risks that require expert evaluation free from political interference. The marketplace will continue generating unforeseen safety challenges that require expert, independent regulatory response. An independent CPSC, staffed by commissioners protected from political pressure, remains essential to ensure consumer protection and public safety.

### **III. ALLOWING REMOVAL OF CPSC COMMISSIONERS FOR ANY REASON COULD JEOPARDIZE PUBLIC SAFETY AND PLACE AMERICAN FAMILIES AT RISK.**

Stripping the CPSC of its statutory for-cause removal protections conflicts with Congress's clear intent to insulate it from political interference. It also could fundamentally undermine the Commission's ability to fulfill its statutory mission to protect Americans from unreasonable risk of injury or death associated with consumer products. Consumer safety decisions must be based on evidence and safety data, not political calculations or industry pressure. When commissioners can be fired at will for making politically unpopular but evidence-backed decisions, that robust regime framework crumbles. The consequences disproportionately impact vulnerable populations like infants, children, and elderly



individuals, while the American public continue to be injured or killed by consumer products at an alarming rate.<sup>54</sup>

**A. Stripping The CPSC's Independence Could Pose Massive Economic and Societal Costs from Preventable Injuries and Deaths.**

Should the attacks on the CPSC's independence result in a less vigorous and evidence-based Commission, preventable injuries and deaths will likely impose an even larger cost on our healthcare systems, families, communities, and the broader economy. The CPSC estimates that the current annual cost of injuries and deaths associated with consumer products is \$1 trillion.<sup>55</sup> Further, the CPSC's cost-benefit

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<sup>54</sup> See generally Rylee Kirk, *192,000 Play Kitchens Are Recalled After Child Dies of Strangulation*, N.Y. Times (Aug. 1, 2025), <https://www.nytimes.com/2025/08/01/business/kids-play-kitchen-recall-toddler-death.html> (toy kitchen recalled after asphyxiation death of 23-month old child); Neil Vigdor, *5 Million Pools Are Recalled After at Least 9 Children Drown*, N.Y. Times (July 21, 2025), <https://www.nytimes.com/2025/07/21/business/pool-recall-drowning-deaths-bestway-intex-polygroup.html> (pools recalled after at nine drowning deaths of children); Aimee Ortiz, *BowFlex Recalls 3.8 Million Adjustable Dumbbells After Injury Reports*, N.Y. Times (June 7, 2025), <https://www.nytimes.com/2025/06/07/business/bowflex-adjustable-dumbbells-recall.html>; Amanda Holpuch, *Fisher-Price Recalls 2 Million 'Snuga Swings' After Five Infant Deaths*, N.Y. Times (Oct. 13, 2024), <https://www.nytimes.com/2024/10/13/business/fisher-price-snuga-swing-recall.html> (infant swing recall after five infant deaths); DEP'T OF JUSTICE, *Two Corporate Executives Sentenced in First-Ever Criminal Prosecution for Failure to Report Under Consumer Product Safety Act* (June 16, 2025), <https://www.justice.gov/opa/pr/two-corporate-executives-sentenced-first-ever-criminal-prosecution-failure-report-under>.

<sup>55</sup> Request for Information on Reducing Regulatory Burdens, 90 Fed. Reg. 24791 (June 12, 2025).

analyses consistently demonstrate that safety regulations provide enormous societal benefits that far exceed the implementation costs. For example, adult bed rail regulation provides up to \$298 million in annual benefits, imposing only \$2 million in costs.<sup>56</sup> These costs fall disproportionately on vulnerable populations, such as infants, children, and elderly individuals, who depend on strong safety rules. Any relaxation of long-standing CPSC standards that might arise as a consequence of appointing Commissioners who are beholden to partisan or industry interests would likely cause healthcare costs to spike—not to mention the catastrophic social cost on American families.

Moreover, industry already relies on the predictability and uniformity of federal product safety standards.<sup>57</sup> These expectations are set in part because the standards are issued by a bipartisan Commission made of up commissioners with staggered terms and tenure protections. A partisan commission whose membership changes with each presidential election will likely adopt—and rescind—standards on a similar timeframe. Manufacturers will need to adjust their product design,

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<sup>56</sup> Safety Standard for Adult Portable Bed Rails, 16 C.F.R. § 1270 (2023).

<sup>57</sup> Rob Paredes, *A Guide to Product Safety Standards*, Safety Culture (Mar. 31, 2025), <https://safetyculture.com/topics/product-safety/product-safety-standards/>; Enhesa, *Benefits of Regulatory Compliance for Business Growth* (July 16, 2025), <https://www.enhesa.com/resources/article/how-regulatory-compliance-enables-business-growth/>.

overhaul inventory, and potentially recall products already in the marketplace on a much more frequent basis in order to comply with shifting rules.

**B. Political Interference with the CPSC Is Already Resulting in Potentially Dangerous Delays to Live-Saving Regulations.**

Unrestrained presidential removal power also creates a different set of incentives for commissioners, who would potentially prioritize political backlash over safety. Complex rulemakings, like the standards described above, often face intense opposition and require sustained regulatory commitment over multiple years.<sup>58</sup> Commissioners subject to at-will removal may face overwhelming pressure on rulemakings that generate controversy or threaten influential industries, forcing them to consider their political futures when analyzing safety-related issues.

The real-world consequences of political interference are already unfolding in real time. Since the current administration dismissed three commissioners, the CPSC has delayed critical safety rules for button cell batteries in toys.<sup>59</sup> Button cell

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<sup>58</sup> See e.g., *Sleeping Danger: The Rock ‘N Play and Failures in Infant Product Safety: Hearing Before the H. Comm. on the Oversight and Reform*, 117th Cong. 1-2 (2021) (opening statement of Rep. Carolyn B. Maloney, Chairwoman). See also Andrew Martin, *After Long Battle, Safer Cribs*, N.Y. Times, July 15, 2011, at B1.

<sup>59</sup> Safety Standard for Toys: Requirements for Toys Containing Button or Coin Cell Batteries NPR, 89 Fed. Reg. 65,791 (Aug. 13, 2024).

batteries, once ingested, can kill children.<sup>60</sup> In October 2020, for example, 17-month-old Reese Hamsmith inadvertently swallowed a button cell battery, which burned a hole in her esophagus, killing her two months later.<sup>61</sup> The CPSC was scheduled to issue a final rule on button cell batteries in toys in July 2025, but the rule was delayed without explanation, despite previously enjoying bipartisan support.<sup>62</sup>

The regulatory pause on implementation of lifesaving rules demonstrates the tangible harm to public safety when the CPSC loses its independence from unlimited presidential removal power. Critical safety protections are delayed, weakened, or abandoned altogether, leaving American families exposed to preventable tragedies.

**C. Unlimited Presidential Removal Power Will Likely Result in The Systemic Erosion of The CPSC's Effectiveness.**

Beyond delaying individual rulemakings, unlimited removal power could fundamentally erode the regulatory process itself. Stakeholders, particularly

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<sup>60</sup> Meghan Holohan, *Her daughter swallowed a button battery and died. Now this mom is taking action*, TODAY (Dec. 14, 2021), <https://www.today.com/parents/mom-advocates-safer-button-batteries-after-daughter-s-death-t210198>.

<sup>61</sup> *Id.*

<sup>62</sup> Shania Shelton & Michael Williams, *US Safety Commissioners Blast Trump Appointee's Delay of Ruling on Water Beads*, CNN (July 17, 2025), <https://www.cnn.com/2025/07/17/business/cspc-water-beads-children>.

industry actors, may have powerful incentives to lobby directly against individual commissioners and their tenure, rather than engaging constructively with the Commission on substantive safety issues or working to improve safety by collaborating to develop voluntary and mandatory standards.<sup>63</sup> This dynamic could transform safety regulation into a political battlefield where rulemakings or enforcement actions trigger removal campaigns rather than safety improvements, and fundamentally shift incentives away from safety improvements and enforcement actions.

As the NCPS recognized over fifty years ago, effective regulation requires a “highly visible Consumer Product Safety Commission” with “the potential to deal firmly and at arm’s length with the industries it must regulate on behalf of the public.”<sup>64</sup> This essential arm’s length relationship would collapse if commissioners served at the pleasure of political authorities who may be influenced by the very industries the CPSC must regulate.

The broader consequences extend beyond regulatory capture. Consumer safety would become a political force rather than a steady safeguard, and the public

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<sup>63</sup> See e.g., Dennis B. Wilson, *What You Can’t Have Won’t Hurt You - The Real Safety Objective of the Firearms Safety and Consumer Protection Act*, 53 CLEV. ST. L. REV. 225, 245 (2005-2006) (discussing the structural independence of the CPSC).

<sup>64</sup> NATIONAL COMM’N ON PROD. SAFETY, *supra* note 2, at 5-6.

health consequences could be severe. Parents could lose trust in safety standards; preventable injuries and deaths could rise; vulnerable populations such as infants, children, and the elderly would likely suffer most, and emergency responses to new hazards would be slowed by political calculations. This nightmare scenario is not hypothetical speculation—it represents the precise harm that Congress intended the CPSC’s for-cause removal to prevent.

For over fifty years, the CPSC’s independence has stood as a bulwark against harm, protecting American families from preventable product-related injuries and deaths. Congress deliberately crafted this independence after witnessing the deadly consequences of regulatory failure—infants and children poisoned by lead paint, seniors asphyxiated by defective bed rails, and families devastated by defective household products that killed 30,000 Americans annually. The CPSC’s remarkable safety achievements validate Congress’s prescient judgment that effective public safety requires commissioners insulated from political pressure through for-cause removal protection. Invalidating statutory removal protections enacted more than a half century ago would override Congress’s deliberate—and fully constitutional—decision to establish an independent CPSC dedicated to protecting the American public, without regard for politics or industry influence.

## **CONCLUSION**

For the foregoing reasons, the judgment of the district court should be affirmed.

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Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limits of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 6,007 of 6,500 words. This brief also complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 29(a)(4) and 32(a)(5)-(6) because it was prepared using Microsoft Word in Times New Roman 14-point font, a proportionally spaced typeface.

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 29, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system.

/s/ Erin Witte

Erin Witte

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## **APPENDIX**

**Consumer Federation of America (CFA)** is an association of over 200 national, state, and local consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education. For over 50 years, CFA has been at the forefront of ensuring that the marketplace is fair and safe.

Founded in 1936, **Consumer Reports** is an independent, non-profit and non-partisan organization that works with and advocates on behalf of consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, Consumer Reports also surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

The **American Academy of Pediatrics (AAP)** is a national professional membership organization of 67,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists, dedicated to improving child and adolescent health

The **Center for Consumer Law and Economic Justice**, housed at the University of California, Berkeley, School of Law, is the leading law school research and advocacy center dedicated to ensuring safe, equal, and fair access to the marketplace. The Center promotes economic fairness through litigation, policy

advocacy, and legal education, and it regularly provides expertise on consumer protection matters to courts and regulatory bodies.

The **National Association of Consumer Advocates (NACA)** is a nonprofit association of more than 1,600 attorneys and consumer advocates committed to representing consumers' interests. NACA's members are private and public sector attorneys, legal services attorneys, law professors, and law students whose primary focus is the protection and representation of consumers. They have represented hundreds of thousands of consumers in small damages actions and consumer class actions. As a national organization fully committed to promoting justice for consumers, with an emphasis on those of modest means or those who are otherwise especially vulnerable, NACA's members have also long advocated to ensure that consumers have remedy and means of redress of injuries caused by unfair practices.

**National Center for Health Research (NCHR)** is a nonpartisan think tank that conducts, analyzes, and explains the latest research and works with consumers, patients, and opinion leaders to develop better programs, policies, and services.

**National Consumers League (NCL)** is a nonprofit, nonpartisan consumer advocacy organization representing consumers and workers on marketplace and workplace issues since its founding in 1899. Headquartered in the District of

Columbia, NCL provides government, businesses, and other organizations with the consumer's perspective on consumer issues, including product safety.