

United States Senate

WASHINGTON, DC 20510

April 3, 2019

The Honorable Ann Marie Buerkle
Acting Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Acting Chairman Buerkle:

We are troubled by recent reports that suggest you engaged in inappropriate coordination with companies you are responsible for regulating, including the portable generator industry and Britax Child Safety, the manufacturer of the popular BOB jogging stroller. We write to seek a better understanding of the extent of your relationships, coordination across industries, and to ascertain how your actions may have resulted in continued harm to consumer safety.

The Consumer Product Safety Commission (CPSC) is a critical safety agency “charged with protecting the public from unreasonable risks of injury or death associated with the use of the thousands of types of consumer products under the agency’s jurisdiction.”¹ Yet, recent news reports suggest that you may be exploiting your current position as Acting Chairman to protect industry and actively undermine colleagues who take seriously the agency’s mission of protecting consumers. The new press reports provide disturbing examples of how you have personally engaged in inappropriate behavior—behavior that fundamentally compromises the agency’s independence and consumers’ basic trust in the thousands of products the agency oversees.

An article in *FairWarning* published last month shows an e-mail from you to the portable generator industry in which you wrote: “I am going to forward you a letter that Commissioner Robinson wants to send out,” while noting that you are “attempting to discourage her” from doing so.² The portable generator industry is an industry that should be under close scrutiny by your agency for manufacturing products that have led to dozens of carbon monoxide poisonings and deaths each year—not one that deserves advanced warning when its profits are threatened. We also recognize that in 2016, when the CPSC issued a proposed mandatory rule to reduce the carbon monoxide levels from portable generators, you were the only commissioner – out of the five – to oppose the proposal.

¹ *About CPSC*. <https://www.cpsc.gov/About-CPSC>.

² Myron Levin, *Industries Turn to Bracewell Lobbyists to Scuttle Product Safety Rules*, *FairWarning* (Mar. 14, 2019), <https://www.fairwarning.org/2019/03/bracewell-lobbyists-consumer-safety/>.

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Additionally, an article published in the *Washington Post* yesterday evening documents how, as the new Acting Chair of the CPSC, you used your elevated position to keep fellow Democratic commissioners in the dark about a significant CPSC staff inquiry into a Britax jogging stroller defect.³ The article also highlights how you previously voted in opposition to suing Britax despite a unanimous and unequivocal recommendation to do so from CPSC staff. As the article describes, your efforts seem to be part of a calculated effort to protect Britax from having to declare a recall of its jogging strollers, which have resulted in hundreds of crashes and nearly 100 injuries.

Accordingly, and pursuant to 15 U.S.C. § 2055(a)(7), we hereby request you provide to the Ranking Member of the U.S. Senate Commerce, Science and Transportation Subcommittee on Manufacturing, Trade, and Consumer Protection, all correspondence (including e-mails, letters, meeting logs, and call summaries), memoranda, and reports between you and any industry trade groups, companies, or individual manufacturers that the CPSC is responsible for regulating, since you became Acting Chairman. We also request you provide all correspondence (including e-mails, letters, meeting logs, and call summaries), memoranda, and reports between you and CPSC staff that address how they should spend their time, how they should or should not be interacting or communicating with any regulated entities, and what information should or should not be shared with other CPSC Commissioners, since you became Acting Chairman.

Finally, we respectfully request you provide answers to the following questions:

CPSC's Independence

1. Do you believe it is appropriate to share outside the CPSC any internal work product of fellow Commissioners or CPSC staff before it has been made public? If so, please explain why. If not, why did you do so?
2. Given the recent reports in *Fair Warning* and the *Washington Post*, how can American consumers trust that you are looking out for their safety?
3. What commitments are you willing to make to assure us that you will lead the CPSC as an independent agency and that you are not beholden to any one industry?

BOB Jogging Strollers by Britax

4. Please identify all incidents, injuries, and deaths, including dates, associated with the BOB jogging strollers, since the CPSC filed an administrative complaint against Britax to force a recall in February 2018.

³ Todd C. Frankel, *After hundreds of crashes, this Britax jogging stroller faced recall. Then Trump appointees stepped in.*, Wash. Post (Apr. 2, 2019), https://www.washingtonpost.com/business/economy/after-hundreds-of-crashes-this-britax-jogging-stroller-faced-recall-then-trump-appointees-stepped-in/2019/04/02/faf23c20-4c06-11e9-b79a-961983b7e0cd_story.html?utm_term=.5e5f17908b3e.

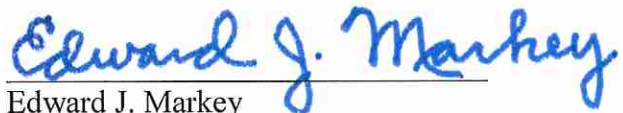
5. What is the CPSC doing to evaluate whether its November 2018 settlement with Britax is effective? Do you have any evidence that it has been effective thus far and how would you measure that effectiveness? Until the information campaign concludes, please provide the monthly or quarterly corrective action plan reports for this agreement, including number of views of any videos, number and type of remedies requested by consumers, number of repair kits mailed out to consumers, as well as any other available metrics.
6. How do you determine when a product safety issue recall requires an “information campaign,” as opposed to a “recall”? What is the threshold?
7. According to the settlement agreement, the information campaign required of Britax will only last 12 months.⁴ Because the jogging strollers have not been recalled, they can be legally resold to other and will persist in the market indefinitely. How does the CPSC intend to make sure consumers are safe when the information campaign concludes?

We respectfully request a response by April 26, 2019. Thank you in advance for your prompt attention to this important matter.

Sincerely,



Richard Blumenthal
Ranking Member
Subcommittee on Manufacturing, Trade,
and Consumer Protection



Edward J. Markey
Member
Subcommittee on Manufacturing, Trade,
and Consumer Protection

⁴ https://www.cpsc.gov/s3fs-public/pdfs/recall/lawsuits/abc/049--2018-11-09%20Consent%20Agreement.pdf?fmF7u_9yoh_i604d46RWV8fL_O0F_8v1