

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Hearing Before the Senate Judiciary Committee
"Defective Products: Will Criminal Penalties Ensure Corporate Accountability?"
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Today we convene to discuss the merits of legislation that would provide federal criminal penalties for the introduction of dangerously defective products into the stream of interstate commerce. This is important legislation that could protect millions of Americans, and its potential is something we should carefully explore. Today's hearing is a good start, and I commend Chairman Specter for his efforts.

Even with strict liability and enhanced whistleblower protections, some continue to manufacture and introduce dangerously defective products into interstate commerce. Corporate actors that do this sometimes ignore known risks, putting profits over responsibility. The recent Vioxx situation is an example. Before that the public was victimized by unsafe tires and unsafe cars. While individual cases and class actions can provide some accountability, Congress must change the incentives to discourage this particularly harmful aspect of corporate behavior. The Chairman's proposal would go a long way toward achieving this.

For those corporations that complain about increased litigation, the remedy is within their control. They must disclose any potentially dangerous defect and let consumers decide if the risks are acceptable. Just look at the asbestos situation we currently face in this country. Were it not for years and years of the continued manufacture and distribution of asbestos during a purposeful cover up of its dangers, we would not be watching people suffer and die, while the companies that made them sick retreat into bankruptcy. Perhaps if a law like this had been in place then, asbestos company executives would have thought twice about engaging in such actions.

I hope that we will also consider the effect this legislation will have on state law. I do not intend for us to preempt state law, and I look forward to the witnesses today providing us with their insight and suggestions about how best to fashion this legislation so that we avoid any unintended consequences. I have seen too many federal legislative schemes that merely serve to slam the courthouse door in the faces of those who are injured. The victims are not to blame. At the very least, companies that make dangerous products owe a commitment to American consumers to ensure full disclosure of known risks, to hide nothing, and to make the safest products possible. When there are potential or known defects that are outweighed by a product's usefulness, such that its introduction is warranted, those defects should still be disclosed. This legislation should be to ensure that this responsibility is fulfilled.

This legislation is especially important given the Bush-Cheney Administration's anti-consumer policies. For example, in 2003 the Bush-Cheney Administration sought to "reinterpret" the Federal Insecticide, Fungicide and Rodenticide Act to foreclose state suits for damages based on defective pesticide products that destroy crops, cause environmental damage, or illness. Thankfully, the Supreme Court rejected this interpretation in 2005 in *Bates v. Dow Agrosciences*. In 2004, the Bush-Cheney Administration sought to weaken organic food standards through legally binding USDA "guidances," which would relax these hard-won and relied-upon standards to the detriment of consumers who make conscious choices to buy organics, and producers who conscientiously strive to meet these exacting requirements. In 2005, buried in proposed guidelines to strengthen automobile roofs, the NHTSA inserted a provision that would shield automakers from liability through preemption if the automobile met minimum federal safety standards. In January of 2006, the FDA finalized a rule regarding labels on pharmaceuticals that will preempt state products liability laws and will insulate drug makers from products liability lawsuits.

In addition to the serious substantive objections to these Bush-Cheney Administration actions is the fact that these policy changes were subject to no congressional scrutiny whatsoever. These are back door, unilateral rule changes at the expense of consumers.

Finally, in 2005, the Bush-Cheney Administration filed an amicus brief in the Supreme Court in *Garcetti v. Ceballos* arguing that individuals who blow the whistle on governmental corruption should not be allowed to sue for subsequent retaliation by their supervisors. Not only is this Administration's position contrary to governmental accountability and the role of whistleblowers, but it is contrary to the spirit of the First Amendment.

I do not see the Bush-Cheney Administration encouraging accountability and corporate responsibility. I have not seen much of that in the Republican Congress. Rather, what I see is the self-proclaimed "small government" party supporting big government efforts to preempt state consumer protection laws that present an economic inconvenience to big business. Just this week the House passed a bill that would weaken consumer protections by preempting state laws that require stricter standards for food safety and labeling. The proposal we discuss today is an exception and I commend Chairman Specter for his initiative.

As we consider this bill, I would like to see language providing whistleblower protection for individuals who disclose a dangerous product defect. It is important that we provide an incentive for individuals who have knowledge of a defective product to come forward.

At the very least, adding a criminal penalty for defective products will help encourage responsible actions within corporations, and may even serve to encourage employees to blow the whistle when human safety is at stake.

One of the witnesses with us is a whistleblower, Dr. Barry Marron, and I greatly appreciate his willingness to provide a first-hand account of his experiences relevant to today's hearing. I also thank the Consumers Union for being with us today.

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