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Committee on Environment and Public Works Washington, D.C.

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HEARING ON THE FRANK R. LAUTENBERG CHEMICAL SAFETY FOR THE 21ST  
CENTURY ACT (S. 697)

WEDNESDAY, MARCH 18, 2015

U.S. SENATE

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m. in room 406, Dirksen Senate Building, the Honorable James Inhofe [chairman of the committee] presiding.

Present: Senators Inhofe, Boxer, Vitter, Barrasso, Carper, Udall, Whitehouse, Cardin, Sanders, Markey, Boozman, Merkley, Fischer, Capito and Rounds.

STATEMENT OF THE HONORABLE JAMES INHOFE, A UNITED STATES SENATOR  
FROM THE STATE OF OKLAHOMA

Senator Inhofe. We will call this hearing to order.

Senator Boxer and I will each have a five-minute opening statement. Then we will proceed.

I want to use half of my five-minute statement so I can give the other half to Senator Vitter, who is the co-author of the bill.

I am very pleased today that we will be discussing the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act. It might be the longest title I can ever remember, but it is worth it. It has strong bipartisan support of nine Democrats and nine Republicans. I am proud to co-sponsor this bill and hope to move it through the committee by way of constructive and orderly process.

For years, Senator Lautenberg worked to update the 1976 law, releasing bill after bill, every Congress. In 2012 he came to me with a clear message. That message was that this law will not be updated without bipartisan support and input from all stakeholders. So Frank and I held a series of stakeholder meetings and through that process, we got a lot of good information on all sides of the issue.

Just about two years ago, Senator Lautenberg teamed up with Senator Vitter to introduce a bipartisan bill that created not

only the first real momentum for meaningful reform, but a foundation for the legislation we have before the committee today.

It is important to note that today we have a number of witnesses focused on public health and the environment and none from industry. This is certainly not because no one from industry supports the bill. So I, without objection, will place supporting statements into the record from a number of groups, including the American Alliance for Innovation.

[The referenced information follows:]

Senator Inhofe. The reason the majority has chosen these witnesses is to focus on the health and environmental provisions of the bill, and greater regulatory certainty for the regulated community as well as better ensuring protections for all Americans, not just those in a few States with a patchwork of programs. Major environmental laws do not get passed without bipartisan support, and Frank recognized that. The simple fact is that any partisan, partisan, reform effort will fail.

Senator Vitter, you can have the remainder of my time.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF THE HONORABLE DAVID VITTER, A UNITED STATES SENATOR  
FROM THE STATE OF LOUISIANA

Senator Vitter. Thank you so much, Mr. Chairman. Thanks for convening today's important hearing. I too want to thank all of our witnesses, starting with Mrs. Bonnie Lautenberg, for being here today, to discuss this important bipartisan effort to reform an outdated law that affects all of our daily lives and our national economy.

As you suggested, more than two years ago, I sat down with Frank Lautenberg in an attempt to find compromise, work together on updating the drastically outdated Toxic Substances Control Act. Updating this law was a long-time goal, it was a passion of Frank's. I am saddened he is not with us today to see and to hear this progress.

But after Frank's unfortunate passing, Senator Tom Udall stepped in to help preserve Frank's legacy and continue working with me to move bipartisan TSCA reform forward. In the long months since, Senator Udall and I have worked tirelessly to ensure the bill substantively addresses the concerns that we heard from fellow Republicans and Democrats, as well as from the environmental and public health communities.

Today, we are here to talk about that work, that successful work, and to answer one key question: are we here to accomplish something that protects the public health and the environment,

while ensuring American industry has the ability to continue to lead and innovate? Or are we willing to just let the status quo remain, the failed status quo, push failed partisan ideas that will not go anywhere?

As members of this committee, I think we have a responsibility to ensure that our constituents are properly served, that we move the ball forward in an important substantive way, and that will only be done clearly with a strong bipartisan approach. And the Udall-Vitter bill we will be discussing today, among other things, is the only bipartisan bill on radar, on the playing field. Our co-sponsors, Republican and Democrat, continue to grow.

It is evident that the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act is the only realistic shot we have at reforming a very broken and dysfunctional system. So I look forward to all of our witnesses' testimony and the discussion.

Again, Mr. Chairman, thank you very much for this hearing.

[The prepared statement of Senator Vitter follows:]

Senator Inhofe. Thank you, Senator Vitter.

Senator Boxer?

STATEMENT OF THE HONORABLE BARBARA BOXER, A UNITED STATES SENATOR  
FROM THE STATE OF CALIFORNIA

Senator Boxer. Thanks so much, Mr. Chairman, and thanks to all of our witnesses who are here.

I am going to ask unanimous consent to place my full statement into the record at this time, and lay out several reasons why I oppose the Udall-Vitter bill.

Senator Inhofe. Without objection.

[The prepared statement of Senator Boxer follows:]

Senator Boxer. I would like to note the presence of two people in the audience today. Erin Brockovich, if she would stand up, please. And Linda Breinstein, and actually Trevor Shaffer. Three people. Senator Markey and I introduced our bill and we named it after Trevor and Linda's husband, who died of asbestos, and Trevor is a survivor of environmental brain cancer and Erin Brockovich, well, she is a legend, and I am so proud that they are here to oppose this bill and to support the Boxer-Markey bill.

I have never seen, in all the years I have been here, such opposition to legislation. I have asked my staff to now stand, showing you the organizations that have come out against this bill. I know you can't read them from where you are, but they will be available to you. There are 450 organizations.

And the reason really is summed up by many of them. I will read you a statement by Mr. Tom McGarrity of the University of Texas, a leading legal scholar on environmental law who said that the Vitter-Udall-Inhofe bill will not make it easier for EPA to regulate toxic substances when considered in light of its aggressive preemption of State law that would actually remove existing protections in many States. The bill is actually worse than the existing statute.

I thank my staff, very, very much, for that.

I want to state, some of these that are on this list, eight

attorneys general, the Breast Cancer Fund, the Asbestos Disease Awareness Organization, Trevor's Trek Foundation, Environmental Working Group, Earth Justice, Safer Chemicals Healthy Families, Association of Women's Health, Obstetric and Neonatal Nurses. The American Nurses Association has taken a stand against this bill. Physicians for Social Responsibility, even the United Steelworkers.

I am going to quote from a couple of these letters, then I am going to yield the remainder of my time to Senator Markey. The Breast Cancer Fund says, "The Frank Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act undermines what few health protections from toxic chemicals now exist. It advances the interests of the chemical industry and disregards years of work by health care professionals, public health advocates and State legislators."

I just want to say, I think if the average was asked, who do you believe more, politicians or the Breast Cancer Fund, I think you know the answer.

According to the Asbestos Disease Awareness Organization, "The fact that the Vitter-Udall bill will not even restrict, much less ban on the deadly substance claiming 30 lives a day is a national travesty."

I yield the remainder of my time to Senator Markey.

STATEMENT OF THE HONORABLE EDWARD MARKEY, A UNITED STATES SENATOR  
FROM THE STATE OF MASSACHUSETTS

Senator Markey. I thank the Ranking Member.

For decades, in Woburn, Massachusetts, chemical companies and other industries used nearby land as their personal dumping grounds for thousands of tons of toxic materials. Those chemicals leached into the groundwater and contaminated the water supply with deadly chemicals, like TCE.

It was in Woburn that I met a young boy named Jimmy Anderson. He was a regular kid except for the fact that he and other Woburn kids were diagnosed with a rare form of leukemia. Jimmy's mother, Ann Anderson, began a movement where she tied this rare disease cluster to contaminated drinking water.

I held a hearing in Woburn to highlight the harm. Ann's battle began the subject of a book and movie, a civil action. And our fight eventually helped spur the creation of this Country's Superfund laws.

Jimmy died in 1981. Incredibly, it took EPA until 2014 to finish studying the risk of TCE. Jimmy would have been in his mid-40s. And EPA still has not taken any action under TSCA to ban TCE.

There is no question in my mind that there will be more Jimmy Andersons unless EPA is given clear authority, resources and deadlines to take action on chemicals that have already been

proven to kill. Unfortunately, the bill we are discussing today does not meet that test. It handcuffs States attorneys general, who are our chemical cops on the beat. It gives known dangers a pass, and it fails in any way to create a strong Federal chemical safety program that will protect public health.

That is why my State's attorney general, Maura Healey, and attorneys general from several other States oppose this bill. Senator Boxer and I have introduced an alternative bill that in my opinion retains the States' ability to clamp down on dangerous chemicals, while ensuring that known chemical threats to public health are acted on quickly.

I thank Senator Boxer for her partnership on this bill, and I look forward to working with all of my colleagues to advance TSCA reform that protects the most vulnerable amongst us from the harm they are exposed to.

I yield back the balance of my time.

[The prepared statement of Senator Markey follows:]

Senator Inhofe. Thank you, Senator Markey.

We are going to be hearing, before we start with our witnesses, from two very significant people. One is Senator Udall, the other is Mrs. Lautenberg. I say to my good friend from New Jersey, since you occupy Frank Lautenberg's seat, that you would like to introduce Bonnie, is that correct?

Senator Booker. It is, and I really do appreciate, Mr. Chairman, your making allowance for this great privilege.

Everybody in New Jersey knows Senator Frank Lautenberg as an incredible champion of not just issues regarding health and safety, but also of children, seniors and in fact, any cause that was just. You would often hear the leader of that effort being Senator Lautenberg.

He knew the importance of chemical safety, and we know that he fought tirelessly for comprehensive reform. He was a giant of a man, and fought for cleaning up Superfund sites, brownfields and protecting children from unsafe chemicals and toxins.

I know how much his effort on toxic chemicals meant to not only Senator Frank Lautenberg, but indeed, to his entire family. I am extraordinarily excited today to have Bonnie Lautenberg here. I would like to welcome her personally, as the Senator from New Jersey who is sitting in Frank Lautenberg's seat. But more importantly, I think I can say this with confidence, that as much of a giant as Senator Frank Lautenberg was, Bonnie towers

just as high. Senator Lautenberg's motto often was, "still fighting." It is clear that Bonnie Lautenberg has not given up the fight herself. She is living that legacy and is still pushing us to reach the summit, that difficult summit, that Senator Lautenberg worked so hard to climb throughout his life.

I do not have a significant other, but I think all of us who serve in the United States Senate know that the men and women who are spouses are often just as equally responsible for the success of the work we do. I know, Senator Udall, your wife is here. I know you and I have esteem for you, sir, but I can say that you married up with confidence.

[Laughter.]

Senator Booker. So I just want to let you know that one of the best things Frank Lautenberg did in his career was to marry Bonnie and have a true partner in the incredible work he did for the State of New Jersey, and indeed, for our Country. With that, I would like to welcome Bonnie Lautenberg to testify.

Senator Inhofe. Thank you, Senator Booker.

If it is all right, Senator Udall, we will start with Mrs. Lautenberg. You are recognized for any comments that you would like to make.

## STATEMENT OF BONNIE LAUTENBERG

Mrs. Lautenberg. Good morning, everybody. I just would like to say that my granddaughter and Frank's granddaughter, Mollie Birer, is here with me today. She is working on the Hill and very proud to be here. She is an intern.

Senator Inhofe. Have her stand up. We want to know which one she is.

[Applause.]

Mrs. Lautenberg. Chairman Inhofe and Ranking Member Boxer, and all the members of the committee, first I want to say how honored I am to come before you today, not as a scientist, not as a policy expert, but as a mother and grandmother, to speak about a bill that was such a passion to my late husband, Senator Frank Lautenberg, a former distinguished member of this committee. We were part of the Senate family, and Frank loved every day he served here. Frank accomplished a lot in this body, the Domestic Violence Gun Ban, raising the drinking age, the new GI Bill and so many others.

But this bill on chemical safety meant everything to him. He told me it was even more important than his signature accomplishment, banning smoking on airplanes. He wanted chemical safety to be his final, enduring legacy. Frank's guiding principle in his 28 years in the Senate was about saving lives and making our environment better for everyone's children and

grandchildren. This is exactly what the effort to reform TSCA is about. TSCA is an outdated, ineffective law that is not protecting families from harm. Frank wanted to change that.

Frank understood that getting this done required the art of compromise. For many years, he could not get Republicans or industry to meaningfully engage on the issue. So we pushed forward a winner take all bill that reflects his wish list on the issue, and pursued an aggressive publicity campaign as well.

Eventually, the pressure worked. Senator Vitter came to the table. He and Frank worked out a compromise that was a major improvement over the current law. That is what set the stage for the bill we have today. Thank you, Senator Vitter.

I want to especially thank Senator Tom Udall for carrying on Frank's legacy forward after he passed away. Tom is every bit the dedicated environmentalist that Frank was. He took up the issue with the same zeal as Frank. To me, it is like part of Frank is still here in the United States Senate, to make this bill a reality. Thank you.

Despite all of this progress, there are still some who are still waiting for Frank's winner take all bill to pass Congress. They are letting the perfect be the enemy of the good. And it is tragic, because if they get their way, then there will be no reform and we will have to live with this completely ineffective TSCA law for many more decades.

We also can't let the interests of a few States undermine the rest of the Country. Frank lamented that it was not fair that New Jersey and the vast majority of States lacked any meaningful measures on this issue but were being held hostage. He worked hard on this compromise to protect the few States with their own laws on this topic, but recognized that the new Federal law will have to become the nationwide standard.

This cause is urgent, because we are living in a toxic world. Chemicals are rampant in the fabrics we and our children sleep in and wear, the rugs and products in our homes and in the larger environment we live in. How many family members and friends have we lost to cancer? We deserve a system that requires screening of all chemicals to see if they cause cancer or other health problems. How many more people must we lose before we realize that having protections in just a few States isn't good enough? We need a Federal program that protects every person in this Country.

The TSCA bill that passed in 1976 has been a shameful failure. It is so bad that even the chemical industry had to admit it. Far too many chemicals are on the market without any sort of testing.

This situation reminds me of the days when I was a kid and we used to run around outside in Long Island, when the fog man came around in his little truck, spraying DDT all over our lawns

and trees. Yes, DDT, and we would run through it. That is what we are doing now. If we continue to let the perfect be the enemy of the good, we will continue to run through the fog.

Frank used to say there were 99 huge egos in this body, but he loved you all. Well, almost all.

[Laughter.]

Mrs. Lautenberg. You know he had a great sense of humor. But he found nothing funny about the dangers of our current environment and sadly, he did not live long enough to fight to get this done. So now, it is up to all of you to make it happen.

This bill is not only about the legacy of Frank Lautenberg. It is about the legacies of each member of this committee. It is time to take positive action. Please, don't let more time pass without a new law. The American people deserve better.

Please, work out your differences and get it done, for your families and for every family in our Country. Thank you, Mr. Chairman.

[The prepared statement of Mrs. Lautenberg follows:]

Senator Inhofe. Thank you, Mrs. Lautenberg. That was an excellent statement and we appreciate it very much.

Senator Udall?

STATEMENT OF THE HONORABLE TOM UDALL, A UNITED STATES SENATOR  
FROM THE STATE OF NEW MEXICO

Senator Udall. Chairman Inhofe, Ranking Member Boxer, and thank you, Bonnie, for those very kind and nice words.

It is nice to be back with all of you today. I was proud to serve for many years with you as a member of this committee. We all served for a long time with our former colleague, the late Senator Frank Lautenberg. We all remember Senator Lautenberg's passion for chemical safety reform. He spoke so often about his children and his grandchildren and the need to do something about this broken law.

For the longest time in his career, there was a tremendous standoff. Most of my Democratic colleagues recall voting in favor of his bill, the Safe Chemicals Act, which unfortunately failed to advance past the vote in 2011. I supported that bill enthusiastically, but it received no Republican support in the committee and had no Republican co-sponsors. There was a failure to find agreement between public health and the industry groups, and between Democrats and Republicans.

But in his final days in the Senate, he worked very hard to find compromise with the opposing side. He put his idea of perfection aside. Because his aim was clear, he actually wanted to protect children, to protect the most vulnerable, and to reform a broken law. The original Lautenberg-Vitter bill was

introduced quickly. Many of its provisions needed clarification and improvement. Senator Vitter and I have been working to improve this bill. And frankly, these changes have almost all been on the public health side of the equation. We have been open, we have been transparent and we have been inclusive. Everyone was invited to the table to comment on the legislation and provide feedback and suggestions.

Senator Vitter and I are not accustomed to working together on environmental issues. We come to the table with different ideas and we came to this issue with different priorities. There were times when negotiations broke down. But we always came back to the table, because we shared a fundamental, bipartisan goal, to cut through the noise and finally reform this broken law.

I think we all agree: TSCA is fatally flawed. It has failed to ban even asbestos. EPA has lacked the tools to protect our most vulnerable, infants, pregnant women, children and the elderly. Compromise is a great challenge and a tall order. But I am here because in my heart I believe this bill will do the job. I believe we have the opportunity to actually reform a law and improve lives and save lives.

And that is the challenge now for this committee, to ignore the rhetoric and focus on the substance. Work through the legislative process. There are still voices out there with concern. I hear them, I want to engage with them constructively.

But hear my concern as well. New Mexico and many other States have very little protection for our citizens. EPA estimates that the cost of evaluating and regulating a chemical from the start to the finish is at least \$2.5 million. It is a figure that many States cannot afford, especially with 80,000 chemicals in commerce and hundreds of new ones every year. We cannot leave the people of my State and so many others unprotected.

It has been 40 years since we first passed TSCA. There has never been a bipartisan effort with this much potential.

Now today, the New York Times, and I am sure all of you have read the Times today, talked about the examples of how to improve the bill. This is in their editorial, they applauded the bipartisan, the editorial board applauded the bipartisan effort that has gone on here. And they have made several suggestions on how to improve the bill. They are good suggestions. They could help build more bipartisan support. So I hope that we can work on them together.

It has been 40 years since we first passed TSCA, and this bipartisan effort can move forward.

Before I close, I do want to address something up front and in the open. Criticism of the substance of this legislation is legitimate from both sides. It is a compromise product. But I urge, I urge everyone participating in this hearing today to reject attacks on anyone's integrity, character and motivations.

Unfortunately, I fielded a few of those in recent weeks. They did not concern me, because they are absurd and unfounded. But they do a serious disservice to the legislative process.

Instead, I urge this hearing to have a great and spirited discussion on the substance, but at the end of the day, as Bonnie said, let's not wait another 40 years to finally move forward. Thank you, and it is, as I said, wonderful to be back in front of the committee and to be with my colleagues. And it is great to be with Bonnie.

[The prepared statement of Senator Udall follows:]

Senator Inhofe. Thank you, Senator Udall. That is an excellent statement. We do miss you on this committee, and without objection, we will make the editorial part of the record.

[The referenced information follows:]

Senator Inhofe. The two of you may be excused, or you may stay. Your call.

Our first panel is going to be the Assistant Administrator of the Office of Chemical Safety and Pollution Prevention of the Environmental Protection Agency, Mr. Jim Jones. He has been here before. He is always welcome. Your professionalism is always welcome as a witness.

STATEMENT OF THE HONORABLE JIM JONES, ASSISTANT ADMINISTRATOR,  
OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION, ENVIRONMENTAL  
PROTECTION AGENCY

Mr. Jones. Good morning, Chairman Inhofe, Ranking Member Boxer and members of the committee. I appreciate the opportunity to join you today to discuss much-needed reform of chemicals management in the United States, and the recently-introduced bill, the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act.

There continues to be wide agreement on the importance of ensuring chemical safety and restoring the public's confidence that the chemicals used in the products they and their families use are safe. The Administration also believes it is crucial to modernizing strength in the Toxic Substances Control Act to provide EPA with the tools necessary to achieve these goals and ensure global leadership in chemicals management.

We continue to be encouraged by the interest in TSCA reform, indicated by the introduction of several bills in recent years and months, the hearings on TSCA-related issues that are being held, and the discussions that are taking place. Key stakeholder share common principles on how best to improve our chemicals management programs.

We at the EPA remain committed to working with this committee and others in both the House and the Senate, members of

the public, the environmental community, the chemical industry, the States and other stakeholders to improve and update TSCA.

As you know, chemicals are found in almost everything we buy and use. They contribute to our health, our well-being and our prosperity. However, we believe it is essential that chemicals are safe. While we have a better understanding of the environmental impacts, exposure pathways and health effects that some chemicals can have than we did when TSCA was passed in 1976, under the existing law, it is challenging to act on that knowledge.

TSCA gives EPA jurisdiction over chemicals produced, used and imported into the United States. However, unlike laws applicable to pesticides and drugs, TSCA does not have a mandatory program that requires the EPA to conduct a review to determine the safety of existing chemicals. In addition, TSCA places burdensome legal and procedural requirements on the EPA before the agency can request the generation and submission of health and environmental effects data on existing chemicals.

While TSCA was an important step forward when it was passed almost 40 years ago, it has proven to be a challenging tool for providing the protection against chemical risks that the public rightfully expects. For example, as we have all heard, in 1989, after years of study and with strong scientific support, the agency issued a rule phasing out most uses of asbestos in

products. Yet in 1991, a Federal court overturned most of this action because it found that the rule had failed to comply with the requirements of TSCA. As a result, in the more than three and a half decades since the passage of TSCA, the EPA has only been able to require testing on a little more than 200 of the original 60,000 chemicals listed on the TSCA inventory and has regulated or banned only five of these chemicals under TSCA Section 6 authority, the last of which was in 1990. In the 25 years since, EPA has relied on voluntary action to collect data and address risks.

In the absence of additional Federal action, an increasing number of States are taking action on chemicals to protect their residents. And the private sector is making their own decisions about chemicals to protect their interests and to respond to consumers.

The Administration is committed to using the current statute to the fullest extent possible. But the nature of the statute has limited progress. In the last six years, the EPA has identified more than 80 priority chemicals for assessment under TSCA. We have completed final assessments on specific uses of four of those chemicals with a fifth to issue soon. Of these five chemicals, two show no significant risks. The remaining three show some risks.

To address these risks that are identified in these three

assessments, EPA is considering pursuing action under Section 6 of TSCA. It is clear that even with the best efforts under law and resources, we need to update and strengthen TSCA and provide the EPA with the appropriate tools to protect the American people from exposure to harmful chemicals.

The EPA believes it is critical that any update to TSCA include certain components. In September of 2009, the Administration announced a set of six principles to update and strengthen TSCA. While the Administration has not yet developed a formal position on the new bill, we continue to feel strongly that updated legislation should provide EPA with the improved ability to make timely decisions if a chemical poses a risk and the ability to take action as appropriate to address those risks.

We believe that it is vitally important to assuring the American public that the chemicals they find in the products they buy and use are safe.

Mr. Chairman, thank you again for your leadership on TSCA reform. I would be happy to answer any questions you or the other members have. Thank you.

[The prepared statement of Mr. Jones follows:]

Senator Inhofe. Thank you, Administrator Jones. That is an excellent statement.

We are going to have a five-minute round. I will lead off and I would say this. Okay, they are going to be six-minute rounds. So mine will be eight questions that will really require probably a one-word response.

Mr. Jones, the Administration does not have a formal position on any TSCA legislation at this time, is that correct?

Mr. Jones. That is correct.

Senator Inhofe. So you will not be able to tell us if EPA believes this bill as a whole is better than current law or not?

Mr. Jones. That is correct.

Senator Inhofe. How many chemicals have been regulated under Section 6 of the current TSCA by the Obama Administration?

Mr. Jones. Zero.

Senator Inhofe. And how many chemicals have been regulated under Section 6 of the current TSCA since 1990?

Mr. Jones. Zero.

Senator Inhofe. The current TSCA safety standards have been criticized for incorporating cost benefit analysis into safety determinations. Does the bill we are discussing today successfully remove any cost benefit analysis from safety determinations?

Mr. Jones. Yes.

Senator Inhofe. A lot of discussion has gone on over how many chemicals EPA should be required to review at any time, any particular time. If EPA had access to an unlimited amount of resources or user fees, is there a limit to EPA's capacity to review, with your current staffing, to review chemicals?

Mr. Jones. I believe there is. I am sorry, this will take more than one word. But from my experience, even in the pesticides program, where we have about three times as many resources under the Food Quality Protection Act, the most output we are able to do is in the range of about 40 a year. Based on that experience, I would expect that would probably be true in the TSCA sense as well.

Senator Inhofe. Thank you, Mr. Jones. You said previously that EPA has identified around 1,000 chemicals with some concerns. If EPA were to make 20 or even 40 of those chemicals high priorities under the bill, doesn't that leave the States with over 950 chemicals to regulate?

Mr. Jones. That is my understanding of how the bill is written.

Senator Inhofe. I know the EPA is working on Section 6 actions regarding the particular chemical in paint strippers. Can you please explain how that action would preempt States, under current TSCA, the current law, and if you took that action today under current law, would that preempt Proposition 65

labeling in California?

Mr. Jones. Under current law, we don't have a lot of experience because we don't do many Section 6 rules. But if we were successful with a Section 6 rule in the example that you gave, Senator Inhofe, my understanding is that current law would preempt States from doing anything other than exactly what we did, or they could actually ban the entire chemical for all commercial uses.

Senator Inhofe. So there can be some preemption under the current law?

Mr. Jones. There would be current preemption.

Senator Inhofe. I thought that was the case.

Lastly, as I was listening to you go through the Administration's TSCA principles in your opening statement, one thing I noticed you didn't mention was preemption. Does the Administration have a formal position on preemption?

Mr. Jones. The Administration consciously did not include a principle on preemption, even though we understood how critical it was ultimately to a bill. We do not have a principle on preemption.

Senator Inhofe. Thank you very much, Mr. Jones.

I have used half of my six minutes. So at the proper time, we will give an additional three minutes to my friend, the author of this bill, Senator Vitter.

Senator Boxer?

Senator Boxer. Thanks so much, MR. Chairman.

I absolutely don't believe in allowing the perfect to be the enemy of the good. That is such an important point. That is why I would be thrilled to support a good bill. I also say you can call something a beautiful name. This bill has a beautiful name, named after a magnificent Senator.

But when the experts look at it, they tell me unequivocally it is not better than current law. As a matter of fact, many say it is worse. Some of them are out in the audience today. They are doctors, they are nurses, they are environmentalists.

I just want to say for the record, because Senator Udall is my friend, we just really disagree on this one, he said don't make attacks personal. And he is right on that. It has nothing to do with personalities. It has to do with children of the United States of America, it has to do with the families of the United States. It has to do with Trevor, who is sitting out there, who, thank God, survived brain cancer that he got when he was exposed to chemicals in an otherwise beautiful, beautiful lake.

So I am not going to stop saying what I think. I am going to escalate saying what I think. Because the information that I have is brought to me by, and these are some of the groups, the Breast Cancer Fund, the Lung Cancer Alliance, the Asbestos

Disease Awareness Organization, the Consumers Union. The legacy of our veterans, military exposures, these all oppose this bill strongly. The National Hispanic Medical Association, the Medical Disease Clusters Alliance, the Oregon Public Health Association, the Birth Defects Research for Children Organization, the National Medical Association, which is African-American doctors. The Physicians for Social Responsibility from a number of States, the American Nurses Association, as I said before. The Delaware Nurses Association, the Maryland Nurses Association. Kids v. Cancer, the Autism Society. Clean Water Action, Earth Justice, League of Conservation Voters. NRDC, Sierra Club, Alaska Community Action on Toxics.

And it goes on and on. The New Jersey Environmental Counsel opposes this. The New Jersey Environmental Federation. The New Jersey Environmental Justice Alliance. Environmental Advocates of New York.

So here is why they oppose the bill. It stops States from being able to protect their citizens from chemicals. And many attorneys general are stunned by its preemption.

Now, I was pleased that Senator Udall said, let's look at the New York Times. Absolutely, look at the New York Times. They criticized the preemption in this bill. Let's fix that. Let's fix the preemption. All of our States care about their citizens. Why should we have a bill that is so opposed and

dramatically opposed by more than 450 organizations get through here, a weak bill that studies 25 chemicals, that is all you are assured of over seven years, and no action required?

So I could go on with the list, but we are putting it in the record. I think it is very, very clear. Senator Udall talks about 80,000 chemicals. He is right. Twenty-five chemicals will be studied over seven years. And guess what? If any one of them is studied, the States can do a thing anymore. They are done. And I am not going to allow that to happen to anybody's people, regardless of State.

So I want a good bill. I don't want a perfect bill. And we don't have it here. That is why Senator Markey and I worked so hard to get a good bill. This isn't about partisanship, or who you can get on your bill. It is about who you protect. And it is shocking to me to see who is behind this bill. It is. It is shocking to me.

Now, Mr. Jones, California's attorney general recently sent a letter describing the ways State authority to set strong chemical safety standards and enforcing existing laws is preempted in the Vitter-Udall bill. Do you agree that all of the erosions of the State authority described in this letter are in fact enabled by the bill text?

Mr. Jones. I think the California State attorney general accurately characterized how preemption would work under the

bill, yes.

Senator Boxer. Well, thank you. Because Kamala Harris, she protects kids. That is what she is known for. And this was unusual for her, to write such a letter.

Mr. Jones, even if EPA does propose a ban or other restrictions on a chemical, isn't it true there is no deadline in the Udall bill by which that ban restriction has to be implemented by industry, which could mean that while State action would be completely preempted, it could also be far longer than seven years before any Federal regulation goes into place?

Mr. Jones. There is no time deadline, that is correct.

Senator Boxer. All right. So here we have a bill that is being sold as protecting everybody and there is not even a deadline to enforce one chemical.

Assistant Administrator Jones, some state attorneys general and California EPA have argued that the way the Udall-Vitter preemption provisions are drafted raises a concern that a State's Clean Air, Clean Water or other environmental laws could also be preempted. Do you agree with that assessment?

Mr. Jones. There is some ambiguity in the way those provisions are drafted, so yes.

Senator Boxer. So yes?

Mr. Jones. It is possible that those kinds of statutes -

Senator Boxer. So it is possible. Let's be clear. That in

this bill we are not only talking about preemption of chemicals, but the State's Clean Air, Clean Water or other environmental laws could be preempted and the answer is, oh, yeah.

Mr. Jones. As it relates to chemicals, that is correct.

Senator Boxer. Yes. That the Clean Air, Clean Water or other environmental laws could be preempted.

Let's be clear what we are dealing with here. We are dealing with a bill that does harm, when they want to prevent harm. That is why these groups are opposing. Do you think the groups, I am not asking this, this is rhetorical, the groups who oppose this bill want to support, just like I want to support, a bill named after Frank Lautenberg? It would be a happy moment. But not this bill. This bill does not reflect the work I did with him in the past. I am just speaking as one colleague.

Thank you.

Senator Inhofe. Thank you, Senator Boxer. Senator Vitter?

Senator Vitter. Thank you, Mr. Chairman.

Thanks, Mr. Jones, for your testimony. You referred to the Obama Administration's essential principles on TSCA reform which were issued several years ago. Sort of your guiding principles. I want to go to those.

The first is that chemicals should be reviewed against a safety standard that is based on sound science and reflects risk-based criteria, protective of human health and the environment.

Is the safety standard in the Udall-Vitter bill we are discussing today consistent with this principle?

Mr. Jones. Yes, I believe so.

Senator Vitter. Okay. Second principle. EPA should be given the tools necessary to ensure that manufacturers are providing the agency with the necessary information to conclude that new and existing chemicals are safe and do not endanger public health or the environment, or else action will be taken. Again, are the provisions in this Udall-Vitter bill granting EPA new authorities to collect information as well as removing barriers like EPA having to prove a chemical poses an unreasonable risk prior to collecting information? Are those parts of the bill consistent with this second principle?

Mr. Jones. Yes.

Senator Vitter. Okay, third principle. EPA needs clear authority to take risk management actions when chemicals do not meet the safety standards, as well as the flexibility to take into account a range of considerations, including sensitive sub-populations, cost, availability of substitutes and other relevant considerations. I know your staff has flagged one issue in technical assistance with regard to some articles language in the bill, but I am confident we can come to a good agreement with your office and we are working on that. Other than that work in progress, are the changes to the safety standard and Section 6 of

this Udall-Vitter bill consistent with this third principle?

Mr. Jones. I appreciate your flagging the articles issue. I think that is a barrier to being consistent with the principles. If that issue were addressed, then I believe the answer would be yes.

Senator Vitter. Great. I appreciate your work on that. We will continue to work and resolve that.

The fourth principle delineates that EPA should have the authority to set priorities for conducting safety reviews as well as clear and practicable deadlines for the completion of chemical reviews. Does the Udall-Vitter bill we are talking about today have clear and practicable deadlines and grant EPA the authority to set priorities for conducting safety reviews consistent with this principle?

Mr. Jones. The principle also reflects a desire that there be timely decisions. I think as Senator Boxer mentioned, there are some questions with respect to the pace. Is the 25 chemicals in 7 years timely; I think there is a good argument that doesn't meet the timely test. Other than not meeting that timely test, yes, I think it is consistent with the other elements of that principle.

Senator Vitter. Okay. And then the fifth principle states that TSCA reform should encourage green chemistry, assure transparency, and include stricter requirements, including

substantiation for a manufacturer's claim of confidential business information. Are the bill's requirements on confidential information as well as the new green chemistry provision, consistent with this fifth principle?

Mr. Jones. Yes.

Senator Vitter. Okay. Then finally, the sixth principle states that TSCA reform should give EPA a sustained source to defray the cost of funding for implementation. Is the user fee section of the bill consistent with this principle?

Mr. Jones. Yes.

Senator Vitter. Thank you very much, Mr. Jones. Your work and EPA's work with us has been very constructive. I know it will continue to be, with the hours of consultation and work. We have adopted many, many elements, including language you have given us. So we will continue that work, particularly in the areas I just flagged. Let me reserve the balance of my time for wrap-up. I may not use it, but let me reserve that.

Senator Inhofe. Thank you, Senator Vitter.

I would like to place into the record a letter supporting the Lautenberg Chemical Safety Act, signed by six attorneys general, and a letter of support signed by a number of TSCA legal experts. Without objection, so ordered.

[The referenced material follows:]

Senator Inhofe. I would also like to place into the record a letter of support signed by five former high-ranking EPA and Justice Department officials, including an assistant attorney general and three former EPA general counsels, that not only supports the bill but strongly reviews a previous letter of law professors in their claims.

Without objection, so ordered.

[The referenced material follows:]

Senator Inhofe. Senator Booker?

Senator Booker. Thank you, Chairman Inhofe, and Ranking Member Boxer, for calling this very important hearing.

I want to start, and very importantly, in complimenting Senator Udall and Senator Vitter for coming together across the aisle to work in a bipartisan fashion on this critical issue of fixing our Nation's broken system of evaluating the impact of toxic chemicals on human health. Any efforts at a bipartisan compromise in the United States Senate should be hailed and praised in and of itself.

I want to acknowledge the progress that Senators Udall and Vitter have made in working together in good faith on this bill. There has been progress. The version of the bill we are considering today has made improvements over the past year in critical areas, such as the definition of the safety standard and the explicit protections for vulnerable populations.

But I have multiple concerns with the bill as currently drafted, and as yet cannot sign on. My concerns include the following. The timing of preemption, as Senator Udall has already entered into the record, in the New York Times, clearly puts front and center the timing of preemption for high priority chemicals, is a serious problem and defect in this bill. The right of States to co-enforce has been taken away. Why should we be afraid of States' rights to take action, especially when the

EPA's budget, as we are seeing right now, continues to get hacked away and away?

There is also limited judicial review for low priority determinations. And there are not sufficient provisions, and I feel very passionately about this, to limit the testing of chemicals on animals where scientifically reliable alternatives exist that would generate equivalent information. I intend to continue working with Senator Vitter and Senator Udall, the bill's co-sponsors, in hopes of addressing these issues and making the bill better.

But I have some specific questions for the Honorable Jim Jones. Mr. Jones, I want to thank you for your testimony, for your candidness and for being so forthright. You testified regarding the list of six Administration principles for TSCA to be updated and strengthened. That is where I would like to focus. When the Administration is reviewing this bill in its final form to decide whether to support it or oppose it, will those six principles be the only consideration, or will the Administration look to other elements of the bill?

Mr. Jones. The Administration will absolutely look at the bill in its totality. And there will be elements that are not related to the principles that I am confident will be brought to bear on that evaluation.

Senator Booker. Right. So to be clear, holding onto those

six principles by this committee is not enough. The Administration will evaluate the totality of the bill and its impacts, is that correct?

Mr. Jones. That is correct.

Senator Booker. When deciding whether to ultimately support or oppose the bill, will one issue the Administration considers be preemption and whether or not the bill strikes a right balance between the Federal Government and State government authority on chemical safety regulation?

Mr. Jones. I am confident that preemption will be a critical element of how the Administration ultimately looks at the totality of the bill and whether or not it strikes the correct balance.

Senator Booker. I am assuming you are using that word critical very purposefully.

Mr. Jones. I am.

Senator Booker. It is a pretty significant element, which draws a large amount of the justifiable criticism of the bill as it stands right now.

Mr. Jones. It is.

Senator Booker. To have years of a gap between which States can act appropriately is very problematic. Would you agree?

Mr. Jones. Senator, I don't want to weigh in on the policy elements of exactly how it is drafted, only to say the

Administration will be looking very hard ultimately at how preemption plays into the overall bill.

Senator Booker. Your courage of weighing in will be noted for the record, sir. I appreciate that.

[Laughter.]

Senator Booker. Mr. Jones, under current TSCA States are permitted to co-enforce any restrictions EPA may ultimately put in place. This new bill takes away the rights of States to co-enforce. Is there any reason you are aware of why State co-enforcement would be problematic in any way, and that removing this important provision would be necessary?

Mr. Jones. Co-enforcement exists in most if not all environmental statutes. I am not aware of scenarios whereby it creates a problem. It basically allows, as has been mentioned, States to enforce their own rules as long as their rule exactly the same as the Federal rule. So you have more cops on the beat.

Senator Booker. I see my time is waning. Finally, and hopefully we will have another round, another issue I am concerned with is animal testing, unnecessary animal testing, cruel animal testing, inhumane animal testing. I am doing everything I can to make sure the bill minimizes that to the extent possible. Specifically, I believe there are alternative testing methods and strategies that exist that the EPA Administrator has determined are scientifically reliable and

would generate equivalent information. I want to know, is this an issue with EPA that you are in agreement with me about there being alternative equally scientifically reliable ways to do it, ways to limit animal suffering, animal cruelty and animal testing?

Mr. Jones. Senator, we are very invested, particularly our colleagues in the Office of Research and Development, in pursuing non-alternative animal testing. My office has been very aggressive in working with those colleagues to see that those tests are deployed when they are scientifically robust and ready to be deployed.

Senator Booker. Thank you very much. Thank you, Mr. Chairman.

Senator Inhofe. Thank you very much. Senator Capito?

Senator Capito. Thank you, Mr. Chairman. Thank you, Mr. Jones for being here.

I would like to begin by asking to submit into the record several statements in support of the TSCA bill. One from the attorney general of West Virginia, one from the president of Building and Construction trades, one from the Smart Transportation Division, which is the former United Transportation Union, one from International Association of Sheet Metal, Air, Rail and Transportation Workers, one from International Association of Machinists and Aerospace, and one

from Bridge Structural, Ornamental and Reinforcing Iron Workers.

Senator Inhofe. Without objection, they will be a part of the record.

[The referenced information follows:]

Senator Capito. Thank you, Mr. Chairman.

Mr. Jones, let me begin, before I get into my questions, ask if you are familiar with the chemical spill that happened in the Kanawha Valley of West Virginia about 15 months ago?

Mr. Jones. Yes, I am, Senator.

Senator Capito. I am a supporter of this bill, I will say that from the outset. I do think that TSCA is not the primary law which would govern accidental spill into the water. But I think TSCA can be a useful resource in situations like the Elk River spill. I am pleased to be an original co-sponsor of this.

Under TSCA, can EPA share confidential information it collects with States, under the present law?

Mr. Jones. No.

Senator Capito. What about local governments?

Mr. Jones. No.

Senator Capito. And then first responders and medical practitioners?

Mr. Jones. No.

Senator Capito. No. Does this, the Lautenberg bill, give EPA new authorities to share confidential information with States?

Mr. Jones. Yes.

Senator Capito. Local governments?

Mr. Jones. Yes.

Senator Capito. Medical providers?

Mr. Jones. Yes.

Senator Capito. One of the frustrating aspects of the Elk River spill, for those of us who live in the Kanawha Valley, which I do, is that we didn't have any kind of information and actually very little information about MCHM, which was the non-toxic chemical that spilled into our water that caused us to all cease the use of our water for an extended period of time.

Does this bill include new language which would require EPA to share information related to exposures and releases of a chemical substance obtained under this program with other Federal agencies or offices within EPA, to better coordinate and address the failures that we saw at the Elk River spill?

Mr. Jones. Yes.

Senator Capito. Thank you. Also on the conditions of use definition in the bill, does it allow EPA flexibility to consider accidental releases and spills in the prioritization of chemicals as well as the safety assessment and determination?

Mr. Jones. It does.

Senator Capito. It does. Well, I would tell my colleagues and those in the audience and those listening that this would really go, I think, a long way toward helping what occurred with the non-toxic spill in our community. What happened was it just sort of fell literally between the cracks of any kind of

regulatory regime. The State has stepped in on tank regulations and other regulations to try to alleviate, to try to make the information. But the sharing of information I think would be great. The water company didn't even know what was upriver from their water intake and what the toxicity of that was.

With that, I yield back my time.

Senator Inhofe. Thank you, Senator Capito. Senator Carper?

Senator Carper. Thanks, Mr. Chairman.

Mr. Jones, welcome. It is good to see you. Thanks for your service.

Looking at the audience, seeing Bonnie Lautenberg back here and seeing Jill Udall, I am reminded of a question I often ask people who are married, particularly people who have been married a long time. I ask them, what is the secret? And I get a lot of answers. Some are very funny and some are actually quite poignant. The best answer I have ever gotten to that question is the two Cs. The two Cs. Communicate and compromise. That is not only the secret for a long marriage between two people, it is also the secret for a vibrant democracy. I would add maybe one third C to that, and that would be collaborate.

What we have seen in the legislative process here is an effort for us to communicate better with one another, and with a lot of stakeholders and with EPA. At the same time, to see if we can't develop some consensus and some compromise and collaborate.

I think we are making progress.

It is ironic, when the bill was first introduced by Frank and by Dave Vitter several years ago, it was roundly endorsed by the New York Times, which today finds that the much stronger version of that bill is not yet up to par. There is a real irony there. I hope that is not lost on everyone in the room.

Let me say, about a year ago I sent a letter, with about a dozen of my colleagues, sent a letter to Senator Udall and Senator Vitter, calling for nine fundamental changes to a previous draft of the bill to make it more protective of public health. This new draft addresses each of them, including a risk-based standard, protection of vulnerable populations, new testing authority for EPA and an enforceable schedule for action on chemicals.

I would just ask, Mr. Jones, I understand that in 2009, EPA laid out several key principles for TSCA reform. We talked a little about those already. Can you tell me just very briefly if those requests that I made a year ago are consistent with EPA's TSCA reform principles?

Mr. Jones. I was actually preparing for this hearing re-reading that letter. It actually in many ways reads like the Administration's principles, so yes. I would say it does.

Senator Carper. Thank you.

I believe that despite the important progress on key issues,

more could be done to ensure that TSCA reform offers Americans confidence that EPA will be able to protect us from risky chemicals, something that both public health advocates and the chemical industry seek. To that end, in a more recent letter, just a week or so ago, to the bill's sponsors, I have highlighted three areas where I would like to achieve a good deal more progress. I think at least one of our colleagues has already referred to one or more of these.

But first, I think States should have an appropriate role in working with EPA to implement and oversee a new Federal TSCA program. Second, State regulations are halted, I think, too soon in the chemical assessment and regulation process with respect to highly toxic chemicals. And the third point that I would like for us to drill down on and maybe do a better job on is with respect to making sure that the public should have, that we have asked whether EPA has acted appropriately in making chemical prioritization decisions.

My question is, simply, would these additional changes also be consistent with EPA's principles for meaningful TSCA reform?

Mr. Jones. Thanks, Senator Carper. As I mentioned in answer to Senator Booker, the Administration did not take a position on preemption, although we will ultimately view that as an important element in any bill. So I can't speak to the first two issues you raised.

Interestingly, the third issue related to judicial review of low priorities, the concept of a low priority wasn't really on the radar when we developed the principle. So there is nothing that speaks directly to it. I would just say that it is unusual for final agency actions not to be judicially reviewable.

Senator Carper. Okay, thanks. And my third question, I want to just go down a little bit on what might be an appropriate role for the States. My colleagues may remember, those who were here when we debated Dodd-Frank, one of the sticking points was the regulation of nationally chartered banks. Nationally chartered banks did not want to be regulated by States, by State regulators, by State attorneys general, by the State governors. They wanted to be regulated under the national charter.

It took us a while to figure out how to thread the needle on this one. But in the end, part of what we said is, you know, the Consumer Finance Protection Bureau could issue regulations with respect to nationally chartered banks, the States attorneys general could enforce those. That was the compromise that we struck. And it not a perfect parallel to the issue that is before us here. But it is the kind of thing that we need to do again. If we could find it with respect to nationally chartered banks and the rights of the States to be involved in the regulation, I think we can probably find it here.

I would just ask you, I agree that this bill would fall

short of offering States a similar role from enforcing Federal rules under TSCA, which might limit how well TSCA safety rules are able to protect Americans from certain risky chemicals.

Mr. Jones. It does limit States from having that role that is referred to as co-enforcement.

Senator Carper. All right. I certainly want to say, I want to stop for a minute, Tom Udall has left the room, but you all just tell him I said, bravo. It is Navy talk for good job. I know it has been hard for him, probably hard for you. But I am pleased that he stuck with it and showed the kind of leadership that he has.

I also want to say to David Vitter, David, thank you for your patience in working with me and a lot of other folks. We are not to the finish line, but we are getting closer. I appreciate that.

And to our chairman, thank you for the way you have conducted ourself in this role as our chairman, particularly with respect to this issue. I am encouraged by the words of the ranking member that maybe those three Cs, communicate, collaborate and compromise, maybe we are about ready to seize the day. Thanks so much.

Senator Inhofe. Thank you, Senator Carper.

Now, Senator Fischer.

Senator Fischer. Thank you, Mr. Chairman.

Mr. Jones, innovation is core to business, and it is key to keeping the United States a leader in technology. We need efficient market access for our innovation to keep America's competitive edge.

As this legislation is currently composed, is it grounded in sound science? Does it facilitate an efficient and transparent product review process? Will it protect confidential business information? And does it provide a single Federal regulatory regime?

Mr. Jones. On the first three questions, I would say the answer is yes. On the single Federal regime, the bill, as does current law, it is not changed at all, requires the agency to ensure that there isn't another Federal agency that could better manage the chemical before we step into the breach to regulate the chemical. But that is a requirement to the existing law, and it is maintained under TSC, under the bill in front of us.

Senator Fischer. Okay. And key for any new regulations to work is confidence from the industry that any confidential business information shared with regulators will be protected. What safeguards are in place with the existing rules, and does this legislation preserve or strengthen those protections that are out there?

Mr. Jones. The general critique that is heard around confidential business information under the current law is that

it is allowed to be applied too broadly to things that really are not trade secrets. What the bill before us does is preserve the trade secret confidentiality, but makes more publicly available information that really isn't about trade secrets, things along the line of health and safety data. But the trade secrets are still allowed to be confidentially protected as long as the manufacturer is able to substantiate why it should be.

Senator Fischer. And do you think safeguards are in place?

Mr. Jones. I believe safeguards are in place, yes.

Senator Fischer. Thank you. Clear communication of regulatory requirements that may result in approval or denial of new products is crucial, we know, for any regulation to work. So what is the process that EPA will use to establish the new regulatory review timelines laid out in this legislation? Do you have the manpower and the bandwidth so that you can handle any new regulations with this new legislation?

Mr. Jones. The bill before us would require EPA to establish all the kinds of procedures that you are describing, either through rule, or some of them through policy. Both of those would require there to be notice and comments. There would be public participation, how we establish the process that would ultimately govern implementation of the statute.

I believe with the fee provision that is included in the bill that the agency would have the resources to implement the

requirements. In the absence of fees, we would not.

Senator Fischer. But with the fees, you would be able, right now, you feel you would have the manpower then that you could implement the bill?

Mr. Jones. With the fees that are in this bill, yes.

Senator Fischer. And in addition to petrochemicals, many chemical substances are also manufactured from bio-based chemicals and renewable feedstock like corn. So would S. 697 give EPA the ability to designate many of those, or even batches of those chemicals, from renewable feed stock as low priority chemicals?

Mr. Jones. It certainly would open that as an avenue. We would obviously have to look at everything on a case by case basis. But that would become a potential avenue for that class of chemistry.

Senator Fischer. Under current law, is EPA required to assess existing chemicals?

Mr. Jones. No, we are not.

Senator Fischer. Does the bill that we are discussing today require you to assess those existing chemicals?

Mr. Jones. Yes, it does.

Senator Fischer. Also, an important part of TSCA that Senator Carper alluded to in his comments, it is in this reform bill, it has been widely discussed, and that is protecting

vulnerable populations, such as pregnant women and children. Does the vulnerable populations definition in this bill assure that the agency has the necessary tools and flexibility so that you can identify and protect any potentially vulnerable populations that are considered in this review of the safety of the chemical substance?

Mr. Jones. I believe so, yes.

Senator Fischer. Thank you very much. Thank you, Mr. Chair.

Senator Inhofe. Thank you, Senator Fischer. Senator Markey?

Senator Markey. Thank you, Mr. Chairman, very much. We thank you, Bonnie Lautenberg, for being here and bringing Frank Lautenberg's great legacy of fighting for toxic protections to us.

The job that we have on this committee is to make sure that there is a bill that does give protections for the next generation, that we have to put in place learning the lessons of the past.

My first question. The Massachusetts Toxic Use Reduction Act is a multi-faceted pollution reduction law that has been successful at decreasing the amount of toxic waste in Massachusetts by 50 percent and spurring innovation of safer chemical formulations to replace other, more dangerous ones. The

Massachusetts Attorney General, Maura Healy, recently sent me a letter describing the way State authority to set strong chemical safety standards and enforce existing laws is preempted in the Udall-Vitter bill. The letter also highlighted the concerns that this bill could preempt actions taken under the Massachusetts Toxic Use Reduction Act and could further be used to interfere with State action related to water quality, air quality, or waste treatment or disposal.

Do you agree that all of the erosions of State authority described in this letter are in fact enabled by the bill's text?

Mr. Jones. I think that the Massachusetts attorney general accurately characterized how preemption would work as it relates to State requirements.

Senator Markey. So the answer is yes, it does accurately characterize the impact on State enforcement. Next question on preemption. The Udall-Vitter bill says that as soon as EPA starts to study a chemical it has designated as high priority, States are prohibited, prohibited from taking new actions to regulate that toxic chemical. Since the bill also allows EPA as long as seven years to finish work on each chemical, do you agree that this could mean that there will be no protections, that chemicals on either the State or Federal level potentially for seven years or longer would then be in place?

Mr. Jones. Yes.

Senator Markey. Next. The Udall-Vitter bill allows, allows the chemical industry pay extra money, pay extra money for EPA to classify a chemical as high priority. Do you agree that this provision could be used by the chemical industry to stop a State from moving forward with plans to regulate a dangerous chemical? Because as soon as EPA starts to study a high priority chemical, that would be paid for by the chemical industry, that States would then be prohibited from regulating it?

Mr. Jones. Yes. I would just say that the bill appears to have a cap on the number of times the EPA could do that. It is 15 percent of the total number of high priorities. But the answer is yes.

Senator Markey. The answer is yes. So the chemical industry could pick those chemicals that would not be in fact subject to jurisdiction by the States.

Next, the Udall-Vitter bill requires EPA to begin working on the first 25 high priority chemicals in the first five years after enactment. How long would it take under the bill for EPA to have to complete work on those first 25 chemicals? And just to be clear, EPA has to start work on 25 chemicals five years after enactment. Each chemical study can take seven years to be finished. So the study on a chemical that begins in year five after enactment will then not have to be finished for 12 years in total. Is that correct?

Mr. Jones. That is correct.

Senator Markey. That is correct.

Next. If it takes 12 years to finish work on the first 25 chemicals, do you agree that given the Udall-Vitter bill's pace and today's methods for assessing chemical risks, it will take more than 100 years to finish studying the 1,000 chemicals that you have previously said were the most in need of assessment?

Mr. Jones. If EPA stuck to the minimum requirement in the statute for that entire period of time, the answer would be yes.

Senator Markey. Next. Flame retardants, a widely-used in commercial products like couches, clothing and cars, EPA has expressed concern that certain flame retardants which can leach from consumer products are persistent biocumulative and toxic to both humans and the environment. Question: does the Udall-Vitter bill make it more difficult than existing law for EPA to regulate a chemical like flame retardants in a couch or chair even after EPA has found that the chemical is unsafe?

Mr. Jones. This relates to the articles discussion we were having earlier. The draft bill creates a fair amount of analytical burden related to any time we are looking at a chemical in an article. That aspect would make them do it.

Senator Markey. It does make them do a separate analysis for every type of product that contains that chemical. You are right. Separate analysis.

And finally, in 1989, EPA tried to ban asbestos under its TSCA authority. But the industry successfully overturned the ban in court in part because the court found that EPA had not met the substantial evidence standard that TSCA required them to meet. The Udall-Vitter bill does not change this standard, even though it can be a much harder standard to meet than the one used in other environmental laws.

Question: do you believe that the use of this same substantial evidence language that has already been the subject of litigation would increase the likelihood that EPA would be sued using some of the very same arguments industry used successfully to overturn the asbestos ban?

Mr. Jones. Our legal team is observing courts who are treating substantial evidence and arbitrary and capricious similarly. That being said, I would expect that a company that opposed the Section 6 rule would try to make the substantial evidence arguments that were made in the asbestos case.

Senator Markey. And again, asbestos front and center. We have to be very careful what we do here to make sure that there is true enforcement. I thank you very much.

Senator Inhofe. Thank you, Senator Markey. Senator Barrasso?

Senator Barrasso. Thank you very much, Mr. Chairman.

Mr. Jones, as a medical doctor, I have long pointed out the

important role that chemicals play in our society. This law and its regulations touches so many aspects of our lives, as well as our economy. Therefore, I think it is critical to make sure the law appropriately balances the risks associated with a chemical, the monetary costs of chemical regulation, and the social and societal benefits that may come from the use of that chemical as well.

As I understand it, one of the key flaws of the current law that EPA has identified is the language in the statute called "least burdensome." TSCA states that EPA should apply the least burdensome means of adequately protecting against the unreasonable risk of a chemical. This provision has been blamed by some as the reason why the law has been so ineffective.

Now, this bill removes that reference to least burdensome. So the question is, despite the removal of this language, if EPA were to find a chemical doesn't meet the safety standard under the legislation, would there still be a mandate for the agency to conduct a cost benefit analysis in forming any rules to regulate the chemical substance?

Mr. Jones. The standard is a risk-based standard under this bill. We are required to conduct a cost benefit analysis in choosing the appropriate risk management to apply. But the risk management that we apply needs to meet the safety standard, which is a risk only standard.

Senator Barrasso. I noticed the Administration's TSCA principles include specific reference to the need for EPA to take into account costs in risk management decisions. Is EPA supportive of some level of cost benefit analysis?

Mr. Jones. The agency and the Executive Branch in general thinks cost benefit analysis is very important for regulation, which is why for the last 30 years the government, the Executive Branch has required of itself to do cost benefit analysis. The difficulty that we have had under TSCA is that most of the benefits that we are worried about the health benefits, are not easily monetized. So we end up with a very cost-biased standard. Because it is easy to monetize the costs, but you can't monetize the benefits, which makes it very difficult to show that your benefits outweigh your costs.

Senator Barrasso. So given that, is the particular cost benefit language in this bill implementable by the agency?

Mr. Jones. I believe so.

Senator Barrasso. Does the cost benefit language in the bill require a cost benefit analysis at the appropriate time, this is a question of time, rather than, say, during a chemical safety determination which is based solely on science, unlike the current law?

Mr. Jones. That is how the Administration's principles are related. The risk management has some consideration for costs,

but the safety determination should be risk only.

Senator Barrasso. So under S. 697, is EPA directed to consider non-quantifiable costs, such as the social and societal benefits of a chemical in any potential regulations?

Mr. Jones. It believe it would include that.

Senator Barrasso. Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Barrasso. Senator Whitehouse?

Senator Whitehouse. Thank you, Chairman.

Mr. Jones, there are places where the EPA's existing regulatory authority preempts conflicting State regulation, is that correct?

Mr. Jones. That is correct.

Senator Whitehouse. Is there any place in EPA's existing regulatory authority where EPA regulations preempt State regulations before those regulations are promulgated?

Mr. Jones. Not that I am aware of.

Senator Whitehouse. And you probably would be in a position to know?

Mr. Jones. My knowledge is not all-encompassing of all regulations. But the ones that I have worked with -

Senator Whitehouse. Let's stick with the chemical area, then.

Mr. Jones. The chemical area, no.

Senator Whitehouse. This would be a novelty?

Mr. Jones. Yes.

Senator Whitehouse. In which you create what might be called a death zone when a chemical is not regulated by EPA because the process has only begun, and yet no other government, no State government, no one else can regulate that chemical, irrespective of what risk it may present to the public?

Mr. Jones. That is correct.

Senator Whitehouse. In your experience with the rulemaking process, do the industry participants in the administrative process of rulemaking to some degree control the pace of that rulemaking through the actions that they can take in that rulemaking process?

Mr. Jones. In my experience, they participate more vigorously than most other stakeholders. And the timing in which they will submit information has sometimes the potential to make things take longer than one might otherwise expect.

Senator Whitehouse. So it is within the power of an industry participant in the regulatory process to slow down the regulatory process, just through the nature of its procedures.

Mr. Jones. I like to think that the government does maintain that control. But my experience indicates that things can take longer because of the kinds of information that we are presented with and the timing with which the information is sent.

Senator Whitehouse. Understood. I think you have said this before, but you expect that there could be as many as a thousand or more chemicals that will end up on the high risk list?

Mr. Jones. The thousand number comes from when we developed our current work plan chemicals, we scanned the field of data that is out there associated with chemicals and found 1,000 chemicals for which there was some hazard data that to us meant it warranted some evaluation. There are likely to be more than that that ultimately do express hazard data, but it is just not known to us at this point.

Senator Whitehouse. As a Federal official involved in health and safety regulation, is it your view that our sovereign States under our Federal system of government also have an important role in health and safety regulation to protect their own citizens?

Mr. Jones. I do.

Senator Whitehouse. And does EPA work often with State officials and State regulators to assure the health and safety of the American people and the population of their States?

Mr. Jones. Yes, we do.

Senator Whitehouse. In fact, in some cases, you have delegated the authority to State officials to implement Federal law, have you not?

Mr. Jones. That is correct.

Senator Whitehouse. So can you think of any place in EPA's jurisdiction in which a State is forbidden to co-enforce an identical State law to the Federal law?

Mr. Jones. I don't know of an example of that.

Senator Whitehouse. If you were a Senator who was presented with frequent attacks on EPA's budget, annual attacks on EPA's budget, and you were concerned that one day those attacks might succeed and EPA's enforcement capability might be drastically limited, would it not be wise to have the prospect of State enforcement of a similar standard just to make sure that the public health and safety was protected by someone?

Mr. Jones. I think our experience with co-enforcement is that is important, even in the absence of declining budgets. Regulations or any law is only effective if there is enforcement of that law.

Senator Whitehouse. The industries' concern is that there not be too many different regimes of regulation that they have to comply with, correct?

Mr. Jones. That is what I have heard.

Senator Whitehouse. So if there is an identical regime, an industry effort to prevent that identical regime from being enforced isn't an effort to deal with the legitimate problem of too much or conflicting regulation by definition, correct?

Mr. Jones. That logic holds true to me.

Senator Whitehouse. It is simply an effort to make sure that there are enough cops on the beat to catch them if they misbehave.

Mr. Jones. I don't know what their motivation is, or anyone's motivation on that is.

Senator Whitehouse. It is the only remaining one, it seems to me, if that first one disappears.

Finally, with respect to the determination of whether a chemical is low priority or high priority, which is roughly, I think, low risk or high risk, who gets to challenge or review if EPA has made a bad determination among these thousands of chemicals, or if new information comes up that suggests that something is no longer appropriately on the low risk or low priority list?

Mr. Jones. My understanding, in the drafting, it is a little tricky to get one's head around it, is that only a State, if the State originally commented on the original designation, would have the potential for challenging a low determination. That is as I understand it, but I could be mistaken. I am pretty confident, though, it is only limited to States. But I think it is a State that has participated in the process heretofore.

Senator Whitehouse. If new information were developed during the seven years of review or at any time in the future after a low priority designation, you could end up with a

situation in which nobody could challenge that error?

Mr. Jones. That is how I understand the draft.

Senator Whitehouse. Thank you very much.

Senator Inhofe. Thank you, Senator. Senator Boozman?

Senator Boozman. Thank you, Mr. Chairman.

Asbestos, not only asbestos but things in that category that we have had trouble dealing with in the past, it is one of the problems that is being the least burdensome rule. Under this legislation, we would get rid of the least burdensome, is that correct?

Mr. Jones. That is correct.

Senator Boozman. Okay, good. Upon enactment, would this bill allow the EPA to make asbestos and similar things and other concerning chemicals a high priority, and therefore the first chemicals through the safety assessment and determination process?

Mr. Jones. It would allow that, yes.

Senator Boozman. So this would be a mechanism to get rid of the things that we have the most concern about?

Mr. Jones. It would allow us to make it a high priority and then require us to do a safety determination and then act if the risk is unacceptable, yes.

Senator Boozman. Good, thank you. Does the bill have a deadline for EPA to promulgate a final rule to regulate a

chemical if it is found to not meet the safety standard?

Mr. Jones. Yes, it does. Two years after we have made a safety determination that the chemical does not meet the safety standard.

Senator Boozman. Okay, good. Thank you for that clarification.

Senator Inhofe. Thank you, Senator Boozman. Senator Cardin?

Senator Cardin. Thank you, Mr. Chairman. I thank you for holding this hearing to allow us all to reflect once again on how fortunate we were to serve in the United States Senate with Frank Lautenberg. He was an incredible force on this committee and a person who put the health of our children as his highest priority. Bonnie, it is wonderful to see you in our committee, and I thank you for continuing his work.

I also want to thank Senator Udall and Senator Vitter for reaching across party lines to come together and try to move forward an issue that we all know needs to be dealt with. The current TSCA law does not work. We have a responsibility to enact a law that will work.

I want to thank Senator Boxer for her passion on this issue and recognizing that we can do better and continuing to raise those issues. I want to thank Senator Markey for his leadership on this issue as well.

Senator Carper is not here, but I do really want to thank him. He has really been trying to get all of us together at various times to move this issue forward, and spends a great deal of time to get there.

Mr. Chairman, I was listening to my colleagues, and they have raised many of the issues that I intend to raise. Just to underscore. But I have not heard any real response. I hope this means that we may be able to center in some areas that can really bring us together. Senator Booker started with that earlier in his round of questioning. Senator Udall mentioned the fact, let's get together and let's continue to work on this bill. He mentioned the New York Times editorial, and several of us have commented on some features of the New York Times.

But in two respects dealing with preemption, it seems to me that there are clear improvements that we need to incorporate in this bill. The first is that just by making a start of a study on a high priority, it preempts the States from acting. And that process could take as long as seven years. So we could be seven years without any action on a chemical that has been determined to be a high priority, preempting the States from taking action that would seem to me, and would seem, I think, to most reasonable people, and Mr. Jones has already responded to this, it would be somewhat unprecedented to have that type of preemption before there is any Federal action at all. So I would

just urge us that that seems like a pretty easy area to start moving on the preemption issue.

Quite frankly, preemption has been our most visible area of difficulty. So if we can make some progress on preemption, I think we then start to talk with our attorneys general and figure out a way we can get this done.

The second thing that Senator Whitehouse just talked about, and that is the co-enforcement issue, and Senator Whitehouse raised some good points. Mr. Jones, you responded that under any circumstances, regardless of your budget, it is better to have more cops on the beat as we are trying to enforce the laws.

But let me just challenge you. I looked at the budget that is being recommended in the House of Representatives by the Budget Committee. The information presented to me shows that in 2024 alone, if that budget were enacted, the non-discretionary spending would be 30 percent below the 2014 level, adjusted for inflation. And the House has shown some propensity to not be so generous to the EPA budgets. So if the EPA budget sustained that type of an attack, would that have an impact on your ability to be able to enforce these laws?

Mr. Jones. Absolutely.

Senator Cardin. We are facing realities here that your budgets could very well be hit. So it is another reason why the co-enforcement issue, to me, should be an easy one for us. To

the extent we can get our States helping us enforce our standards, they have to use our standards under the bill, I can't understand why there would be any objection to allowing the States to move forward. Brian Frosh, the Attorney General of Maryland, will be on the next panel. He is here. He is an independent attorney general that is interested in the public welfare. He is my lawyer, because I am a citizen of Maryland. We certainly will want him enforcing these standards in our State and helping EPA do that. I think you are shaking your head, so I just want the record to show that Mr. Jones is enthusiastically shaking his head, as is Brian Frosh, the Attorney General of Maryland.

[Laughter.]

Senator Cardin. I want to get to one other issue in the time that remains. Maybe you can help me on this. That is, can you explain the difference between the safety standard of unreasonable risk to health and reasonable certainty of no harm? Do you have good legal doctrine for me to understand the difference between those two standards?

Mr. Jones. Reasonable certainty of no harm is the standard we apply in our pesticides program, which we have through our actions interpreted it to mean that there shouldn't be a cancer risk greater than one in a million, or that we have had adequate margins of exposure for thresholds. Unreasonable risk with the

way in which it is characterized in the current bill, without cost consideration or the prohibition against cost considerations, would ultimately be defined by the way in which the agency implemented it. So we would obviously be only able to consider risk in that determination and we would have to make judgments about what level of risk defined an unreasonable risk.

Senator Cardin. So we don't have a track record on that standard?

Mr. Jones. Not with that standard in the, with the prohibition of giving cost any consideration which is how it is drafted right now.

Senator Cardin. So that adds some uncertainty to it?

Mr. Jones. Yes.

Senator Cardin. Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Cardin. Senator Rounds?

Senator Rounds. Thank you, Mr. Chairman.

Mr. Jones, I am brand new, but I understand that in November of 2014, you testified before the House on TSCA, and during that hearing you stated that there were several specific improvements that were need in any TSCA legislation to be meaningful for the agency.

Does this particular proposal, S. 697, which would amend TSCA to give the EPA new authorities to obtain information at multiple stages in the process, how would this differ from the

current process? And I believe this is an example of a bipartisan approach that clearly has the support of a lot of the members of the committee here. I think this may be very well a stepping stone in terms of how we do business within the committee on other issues as well.

But I would sure like to know what your thoughts are in terms of how this would change the existing process.

Mr. Jones. The biggest change is that right now, there is no duty upon the EPA to look at existing chemicals for safety at all. So we can do nothing in that respect and be in compliance. The Lautenberg bill requires us to look at existing chemicals and creates a schedule for doing that. That is probably one of the fundamental changes.

The other fundamental change is that it changes the standard upon which we have to evaluate a chemical. And as has been mentioned before, it eliminates one of the hurdles that we experienced, which is this requirement to find the least burdensome way in which to regulate chemicals. Then it also eliminates the cost benefit balancing that was previously required and gives us a risk-based standard that allows us to give cost considerations without having to say the actual benefits literally outweigh the costs.

Senator Rounds. Does the definition of conditions of use, which is found within the bill, allow EPA to review not only the

uses intended by the manufacturer but also those that go beyond the label, but that are reasonably foreseeable?

Mr. Jones. Reasonably foreseeable is the language, I believe, so yes. There would be things that are beyond how it is labeled but can be foreseen to occur.

Senator Rounds. How would these changes help the EPA? Would these give you more tools to do your job better?

Mr. Jones. The principle, one of the tools is a legal one, in that the standard is one that takes away the principal barriers that we are experiencing today. So those are tools.

The other is kind of loosely a tool, requiring us to do something that we are not otherwise required to do. It is not exactly a tool, but a particularly relevant piece to the bill.

Senator Rounds. Thank you, Mr. Chairman. I yield back the time.

Senator Inhofe. Thank you, Senator Rounds.

Senator Sanders?

Senator Sanders. Thank you, Mr. Chairman. Like others, I want to welcome Bonnie Lautenberg here. Jane says hello and thank you for reminding us of all the great work that Frank has done.

I also want to thank Senator Markey and Senator Boxer for their leadership on addressing this very, very important issue. Mr. Chairman, I got involved in this issue soon after I was

elected to the U.S. House. I will never forget it. I got a call from a woman in Montpelier, Vermont. And she said something which frankly I initially did not believe. She said that, we installed in our home in Montpelier a brand new carpet. And as the carpet was unrolled, it off-gassed and she and her kids became pretty sick. I thought, this doesn't sound right. I really did. I was disbelieving of that.

Well, we did a little study on it, and it turns out that all over this Country in many States there were attorneys general working on the issue, and I see Mr. Jones is acknowledging it. This has been a problem. A lot of chemicals in new carpets off-gas. And if there is not proper ventilation, people can become sick. That is how I got involved. We have made some progress on that, by the way, I became involved in this.

It seems to me that our goal is not to argue whether or not the current TSCA bill is adequate. I think we have all agreed that it is not. The real issue is, given the fact that we have tens of thousands of chemicals, of which many of them we know very little about, we don't know how they interact with each other, we don't know how they impact vulnerable populations like kids or people who are ill.

It seems to me that we have the obligation to pass legislation which in fact protects the people of this Country, especially our children. Now, my concerns about the bill that we

are discussing today, the Vitter-Udall bill, is that it makes it extremely difficult for the EPA to ban or phase out toxic chemicals even after determining that they are dangerous. That does not make a lot of sense to me. That the bill prohibits States from enforcing safety standards that are identical to Federal standards, even if EPA enforcement is inadequate, the bill prohibits States from taking actions on chemicals even after determining that a chemical is dangerous if the EPA really identifies a chemical as one deserving of attention, and the bill enables the chemical industry to preemptively place chemicals on the so-called high priority list, preempting States like Vermont from taking action for many years.

Now, I find two aspects of this discussion somewhat interesting. First of all, virtually every hearing that we hold, every markup that we hold, we hear constant attacks against the EPA, as I think Senator Whitehouse and Senator Cardin have indicated. We expect the majority party right now to go forward with massive cuts in the EPA. And now we are led to believe that it should not be States like Vermont and Massachusetts or California who have been vigorous in dealing with this issue, they should not have the responsibility to go forward, but it should be in EPA, which the Republicans want to substantially cut.

Frankly, I don't think that passes the laugh test, if I may

say so.

A second point, on a more philosophical basis, I hear many of my Republican friends talking about federalism. I believe in federalism. I think that is a remarkable concept, which says, we have 50 States out there, each doing different things. We learn from each other, Federal Government learns from them, the States learn from the Federal Government. But essentially to tie the hands of States, especially those States who have been most active on this issue, and say, we just want a Federal Government, by the way, we want to cut the funding for that agency which is asked to enforce this legislation, doesn't make a whole lot of sense to me.

So I strongly support what Senator Markey and Senator Boxer are trying to accomplish.

Let me ask, Mr. Jones, a question if I can. Mr. Jones, if we adopted the Udall-Vitter bill as proposed, isn't it true that this would weaken the ability of States like the State of Vermont to take action to limit toxic chemicals?

Mr. Jones. The State of Vermont would not be able to take action on a chemical that EPA designated as a high priority.

Senator Sanders. Well, that is enough for me.

Senator Inhofe. Thank you, Senator Sanders. Senator Merkley?

Senator Merkley. I thank you very much, Mr. Chair. I would

also like to welcome Bonnie. It is good to see you again. I know that our colleague, Senator Lautenberg, worked mightily to try to take on these chemicals, for the benefit of everyone's health in this Nation. We are all engaged in that common enterprise. I think we can concur that things that are damaging toxins, cancer-causing chemicals in everyday products, we should find other ways to make those products. That is what this is all about. The question is whether this bill at this moment gets us there. If it doesn't, what further changes do we need to make.

Under the existing TSCA law, there is State enforcement, is there not, Mr. Jones?

Mr. Jones. Yes, there is.

Senator Merkley. But under this law, there would not be State co-enforcement?

Mr. Jones. That is correct.

Senator Merkley. So in some ways, that is a step away from a strong enforcement regime?

Mr. Jones. Yes.

Senator Merkley. And under the existing TSCA law, preemption occurs only when the regulations are put into place?

Mr. Jones. That is correct.

Senator Merkley. But under this law, they are not put into place in that same fashion?

Mr. Jones. When the EPA identifies a chemical as high, a

State is preempted.

Senator Merkley. So if, for example, the EPA was to identify a chemical as high risk and a State said, oh, it has been identified as high risk, we want to put a label on these products to warn people, they would be preempted from doing so under this law?

Mr. Jones. High priorities determined by the statute, but basically what you said is correct, that once we have identified a chemical as high priority, a State would be preempted from labeling or any other restriction.

Senator Merkley. And that preemption might exist for all the years that were being referred to that it might take for EPA to act on that particular chemical? The State would not act, the Federal Government would not yet have acted, and yet we know there is a high risk item out there?

Mr. Jones. That is correct.

Senator Merkley. One of the issues we had come up in Oregon was regarding flame retardants. The story on this goes back to the tobacco companies essentially wanted to downplay the role of cigarettes causing house fires, because they had the accelerants in the tobacco and they dropped into the cushions. They said, well, let's focus on the problem really being the furniture, and there should be flame retardants in the furniture.

So there has been a massive requirement for flame retardants

and a lot of the foam has 3 to 6 percent by weight flame retardants. And yet we found out later that not only were they cancer-causing but they did nothing to prevent house fires. So here we are, and this is also in, for example, carpets, and my colleague referred to that. Here are babies crawling on carpets full of flame retardants that have toxic chemicals in them and breathing the dust in. That is a big problem.

But here is the situation. There is not just one chemical. There is a family of chemicals. They are called congeners. But 209 chemicals in that family. So imagine essentially when Oregon wanted to regulate one chemical, the chemical industry came out with a different version of the flame retardant. So if there are 209 potential versions just in this one family and you have to do basically one at a time, doesn't this create an indefinite ability for the industry to keep putting cancer-causing chemicals into our carpets without the ability to kind of catch up, if you will?

Mr. Jones. Flame retardants, for many of the reasons you described, Senator, are very challenging. Even under the existing statute, we are attempting to assess these compounds by doing it in groups as opposed to individually, so that we avoid the scenario you are describing, where the serial evaluation just keeps leading to potentially unproductive substitution. It is a very difficult challenge.

Senator Merkley. Will you be saying that the EPA has the resources to evaluate 209 versions of the chemical at the same time?

Mr. Jones. We are looking at about 20 of them right now. We try to pick the 20 that have potentially the greatest hazard and exposure.

Senator Merkley. Another concern here is that the designation for low priority can be taken, in fact is taken, according to the flow chart under this bill, before there is a safety analysis. Doesn't that seem a little bit like putting the cart in front of the horse?

Mr. Jones. The way we have read the standard for low determination which is likely to meet the safety standard is that you would have to be so confident in it being low hazard and low exposure that you don't need to do a safety determination. That is how we would read that provision.

Senator Merkley. And up to the judgment of the EPA within the resources that it might particularly have under any given Administration or budget regime?

Mr. Jones. The judgment is the key word there, because of a lack of judicial review of that determination.

Senator Merkley. That is a significant concern, what you have pointed out, the lack of public being able to challenge that low priority determination, given the flexibility that can occur

among different Administrations.

Mr. Jones. I agree. It is kind of interesting when you think of, there is no judicial review, does it really matter what the standard is, because nobody can challenge you.

Senator Merkley. Well, there is a section in the bill, and I will wrap up on this note. There is a section in the bill which has a, let me turn back to it here, it has a history that is called a nomenclature section. This bill has been in there since 2013. There is a great deal of uncertainty as to what this section is actually trying to accomplish. Can you fill us in on that?

Mr. Jones. My understanding is that some of the nomenclature around how a chemical was originally placed on the TSCA inventory, which is important in terms of how the statute operates. If you are on the inventory, you can sell a chemical in commerce. But there is a lot of interest by particular manufacturers that that nomenclature be maintained, that we don't start changing the way in which we describe what a new chemical is, for example. The desire is to maintain the longstanding way in which a new chemical in particular was placed on that inventory.

Senator Merkley. So this simply is a naming provision with no implications for whether something makes it onto a list of high priority, low priority or in any other way influences the

policies regarding this particular chemical?

Mr. Jones. I would actually like to get back to you on that, Senator. I don't think I have a good answer.

Senator Merkley. I would appreciate working with you all.

Senator Inhofe. Thank you, Senator Merkley. We want the next panel to be prepared to come forward, but I retained four minutes of my time, which I will allow the author to use, if he so desires.

Senator Vitter. Thanks very much, Mr. Chairman.

And thanks, Mr. Jones. I just have a few wrap-up questions on some key issues we have been discussing. Let's start with preemption. Doesn't the Udall-Vitter bill grandfather in permanently all State chemical specific regulations that were in place January 1<sup>st</sup>, 2015?

Mr. Jones. That is correct.

Senator Vitter. So if a State has already acted, even if EPA takes on a chemical, even if EPA says, you can drink this and you will have a great life, that State regulation is still in effect?

Mr. Jones. That is saved, that is correct.

Senator Vitter. Doesn't the Udall-Vitter bill grandfather in California's Proposition 65?

Mr. Jones. That is correct.

Senator Vitter. Okay. Doesn't it keep in place any State

regulation that exists prior to the EPA taking up a chemical until the EPA makes a conclusion in its study?

Mr. Jones. That is correct.

Senator Vitter. So if a State has a regulation on a chemical that EPA takes up, that regulation doesn't go away unless and until EPA essentially blesses the chemical?

Mr. Jones. Or regulates it, yes.

Senator Vitter. Correct. Okay. And then there was this discussion of industry priorities and how somehow that is some grand conspiracy to get rid of State regulations, which it isn't. Isn't it true that EPA has complete discretion over accepting or denying those requests, over accepting or denying that money and that request to take up any certain chemical?

Mr. Jones. That is correct, and as I mentioned, we are also limited under the bill to only 15 percent of all priorities can come from that stream. We have complete discretion in how we determine what the priority is.

Senator Vitter. And to go directly to Senator Markey's question, isn't it true that when EPA takes up a chemical through this particular route, that in fact the preemption rules are different? And in fact, States can act while you are studying the chemical, completely contrary to what Senator Markey said, until EPA makes a final decision?

Mr. Jones. That is correct. For chemicals that come in

through that venue, the preemption rules are different.

Senator Vitter. So for that particular path, the rules are different and more allowing of the State regulations to continue?

Mr. Jones. Yes.

Senator Vitter. Let me go to this issue of the 25 chemicals over so many years. I want to very clear, so everyone is clear, that is a minimum, that is a floor, correct?

Mr. Jones. What we are statutorily required to do, yes.

Senator Vitter. Yes. And in fact, the Udall-Vitter bill gives EPA more authority, correct?

Mr. Jones. We can do more, yes, it does.

Senator Vitter. And the Vitter-Udall bill gives EPA more resources through user fees, correct?

Mr. Jones. Yes.

Senator Vitter. And it gives EPA more resources through this route of chemical companies being able to supplement your budget, even though you retain all the control, is that correct?

Mr. Jones. That is correct.

Senator Vitter. So obviously, if you zoom past 25, if you get to 40, if you go past 40, there is no ceiling, there is nothing in the law preventing you from doing that?

Mr. Jones. No ceiling.

Senator Vitter. And then a final comment, which is simply that, we are talking about this in the context of environmental

regulation, we are the environmental committee. But I would suggest this bill is at least as similar, maybe more similar to product regulation when the Federal Government regulates products in commerce. Because these chemicals go into products in commerce. So I think we need to have the preemption discussion in that context. I think when we do, you see that these sorts of rules are the norm and not the exception.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Mr. Jones. We appreciate your very straightforward way of answering the questions. You are excused.

We would ask the next panel to come forward. Because of the timing, we are going to ask you to try to abbreviate your statements as you see fit. And then we will change and have five-minute rounds for questions instead of six.

While they are being seated, let me tell everyone who is here. Ken Cook is President and Co-Founder of the Environmental Working Group. Brian Frosh is Attorney General of the State of Maryland, he has been referred to several times. Dr. Lynn Goldman is Dean of Public Health, Milken Institute School of Public Health, George Washington University. Dr. Edward McCabe is Senior Vice President and Chief Medical Officer of the March of Dimes Foundation. And Dr. Richard Denison is the Lead Senior Scientist of the Environmental Defense Fund.

We will have five-minute opening statements, if they can be abbreviated we would appreciate it. We will start with Mr. Cook and work the other way.

STATEMENT OF KEN COOK, PRESIDENT AND CO-FOUNDER, ENVIRONMENTAL  
WORKING GROUP

Mr. Cook. Mr. Chairman, Ranking Member Boxer, thank you very much. I want to thank everyone on the committee for holding this critically important hearing.

Congress has not sent a major Federal environmental protection law to the President's desk for signature in 19 years. It will be 19 years this summer, to be exact, when we saw President Clinton, in the space of a couple of months, sign landmark amendments to the Safe Drinking Water Act and put into law a new reform system for pesticide policy. Nineteen years ago, and that was it.

We have decades of passing major Federal environmental regulation and law that preceded that. But I think we all know that if it came down to it, not a single one of those landmark laws would pass this Congress today. Not a one. We celebrated 50 years of the Wilderness Act last fall. Now, probably most people in this room have been in a wilderness that was protected under that law. Does anyone remotely believe that we could pass the Wilderness Act today? No.

And the reason is that in the past, we have seen environmental law and regulation come about because of advances in science, public support, engagement of both parties, and both parties acting through bipartisanship in the service of

environmental protection and public health, and not the other way around.

Today, much as we salute the advances that have been made and the engagement that has happened, we still look at an end product, the bill before us today, that is severely flawed. I would ask that my testimony in its entirety that goes into detail including on matters such as preemption be entered into the record.

But I want to focus on two particular issues.

Senator Inhofe. Let me interrupt you and say all testimony, written testimony, will be a part of the record. Go ahead.

Mr. Cook. Thank you, Mr. Chairman.

Let me talk about a couple of broad issues in the context of constituents you might encounter as you meet with them in a town hall meeting talking about this bill. Let's talk first about perhaps a cancer survivor, maybe parents like Trevor Shaffer's parents, who are asking you a very simple question: under the proposal, under this safety standard in this proposal, how will you treat known human carcinogens? Known human carcinogens that every agency in the world knows causes cancer?

And the safety standard answer will be as we just heard from Mr. Jones, well, we are going to try something new. We are going to try something that has never been tested. We are going to try unreasonable risk as the standard against which we will determine

whether or not carcinogens will be regulated.

Now, we heard Mr. Jones say that it will be up to the agency to determine that. And we read in the New York Times this morning that the tougher, preferable standard, superior standard, would be reasonable certainty of no harm, for which we do have regulatory history. It has regulated thousands and thousands of pesticides that are on the market today. They weren't all banned by that standard. It is just not a standard that the chemical industry wants. Because when it really works is when you have a dangerous chemical, a known human carcinogen. When you have an agent that causes birth defects, when you have an agent that causes serious neural developmental harm, that is when that standard comes in and is most important to have.

The next person in line talking to you about this is perhaps someone who is pregnant, starting a family. I have a seven year old. I have had people in that line come up to me. And what they are going to ask you is, this little baby is going to be coming into the world here in just a few months. And I am worried about all these chemicals that studies have shown, including Environmental Working Group studies, have shown. That baby has already been exposed to hundreds and hundreds of toxic chemicals in the womb.

Tell me, what is the pace we can expect of dealing with these toxic chemicals under this particular legislative proposal?

The answer will be, well, we think we will get to it in 100 years or so, get through this first list of 1,000 or maybe more, maybe 100 years. Now, constituents may not be surprised that it will take Washington 100 years to do anything. But when someone who is pregnant is asking you that question, what you are essentially telling them is, when you add up all these issues, you add up the money issues, the notion that there are people in Congress who want to put their "boot on the neck" of the Environmental Protection Agency. There are concerns about goals and deadlines, we have heard them very well expressed here by many of the questions today.

Senator Inhofe. Mr. Cook, you are over your time. Will you conclude, please?

Mr. Cook. I am sorry. I apologize, Mr. Chairman. I will stop right there.

[The prepared statement of Mr. Cook follows:]

Senator Inhofe. You will have ample opportunity in response to questions.

Mr. Cook. Thank you, Mr. Chairman.

Senator Inhofe. General Frosh?

STATEMENT OF THE HONORABLE BRIAN E. FROSH, ATTORNEY GENERAL,  
STATE OF MARYLAND

Mr. Frosh. Thank you very much, Chairman Inhofe and Ranking Member Boxer, members of the committee. It is an honor for me to be here with you. It is a special honor to be here with my Senator, Senator Ben Cardin. It is always a pleasure to work with you.

I want to thank all the members of the committee for your commitment to updating the Toxic Substances Control Act. There is widespread agreement that this Act needs an overhaul. It is not protecting our constituents, it is not protecting them from exposure to toxic chemicals as it should. Reform is needed. But that reform must be built on a platform of meaningful protections for the public. And I am here today to ask you not to interfere with States' rights, the rights of States specifically to protect their citizens from toxic substances, from poison.

As a State attorney general, and Senator Markey referred to me and my colleagues as the cops on the beat, I am deeply concerned that S. 697 would abandon the model of cooperative federalism that characterizes other Federal environmental laws and has characterized the relationship between States and the Federal Government for four decades under TSCA. It essentially puts the States out of business of protecting their people from poison.

The preemption provisions that are built into this legislation tie the hands of States at nearly every turn. Among these, there is a prohibition on new State chemical restrictions from the moment EPA begins the process of considering regulation of high priority chemicals. It is a plain fact that the bill itself allows this EPA review period to last as long as seven years. That doesn't account for procrastination, sloth or litigation.

Let's say it is only seven years. Let's say we are talking about a toxic chemical that is seven years with no Federal regulation, seven years during which no State can take action regardless of how dangerous, how toxic, how poisonous a chemical is, regardless of its impact on men, women or children.

Seems to me the legislation has got the priorities upside down. If a chemical is dangerous, we should be acting as quickly as we can to protect our people. If the Federal Government cannot act swiftly and it may have come to your attention that it usually does not, States ought to be able to fill the void. States have done a good job of identifying threats to their citizens, and some, including Maryland, have passed laws that shield their people from toxic chemicals.

The laboratories of democracy, as Justice Brandeis called the States, have been out in front of Congress, out front of the EPA and I think to the great benefit of our entire Nation. In

Maryland, we passed laws to protect infants and children from ingesting bisphenol A, BPA. So have many other States. If you looked at EPA's website this morning, you will see the EPA acknowledges that it is a reproductive, developmental and systemic toxic in animal studies. EPA is studying it.

Washington and Oregon restrict flame retardants like DECA BDE. Iowa restricts packaging containing lead, cadmium, mercury, hexavalent chromium. You don't want your kids chewing on this stuff. Maine, New York, California, many other States have enacted laws that protect their citizens from toxics. We are talking about chemicals that cause chronic diseases, respiratory ailments, cancer, birth defects and death.

Usually, when the Federal Government preempts the States, it is because you say to us, we got this. We are regulating this. You don't need to worry about it. This legislation preempts the States before the Federal Government takes action. It is not, we got your back, it is, we are going to think about it. You sit back.

I think we share the same objective. No one wants people to get poisoned. We all want an economy that is robust and healthy as well. State governments do a pretty good job. I ask that you respect their judgment. Respect the rights of States to protect their citizens. Let us continue to work cooperatively to prevent harm to people we serve. Fix TSCA. But do no harm. Don't

preempt the States. Allow us to continue to guard the health and safety of our citizens and protect them from toxic chemicals.

Thank you very much.

[The prepared statement of Mr. Frosh follows:]

Senator Inhofe. Thank you, General Frosh.

Dr. Goldman?

STATEMENT OF LYNN R. GOLDMAN, M.D., MICHAEL AND LORI MILKEN DEAN  
OF PUBLIC HEALTH, MILKEN INSTITUTE SCHOOL OF PUBLIC HEALTH, THE  
GEORGE WASHINGTON UNIVERSITY

Dr. Goldman. Mr. Chairman, and members of the committee, it  
my honor to testify today about the Frank R. Lautenberg Chemical  
Safety for the 21<sup>st</sup> Century Act, a bill to reform the Toxic  
Substances Control Act. And I do dedicate my testimony to the  
memory of Frank Lautenberg and his commitment to making chemicals  
safer.

I am a pediatrician, and as you know, between 1993 through  
1998, I served as Assistant Administrator for the USEPA office  
that is now called the Office of Chemical Safety and Pollution  
Prevention. I first testified before this committee about the  
need for TSCA overhaul 21 years ago, in May of 1994. Since that  
time, Congress did overhaul the pesticide law under the Food  
Quality Protection act in 1996. But TSCA unfortunately is frozen  
in time.

The most important amendment in the Lautenberg Act is to  
replace the risk benefit balancing requirement in the current  
version of TSCA with a firm public health standard requiring that  
EPA make decisions solely on the basis of risk to human health  
and the environment. The provision requiring protection of  
infants, children, the elderly, pregnant women and other  
populations also is an immense improvement over current law.

The Lautenberg Act also provides EPA with the strong authority it needs to order chemical testing, much as it currently has for pesticides.

The 1989 Asbestos Ban and Phase-Out Rule, as you know, was overturned by the Fifth Circuit Court, which interpreted the least burdensome clause of Section 6 to imply a preference for end of the pipe solutions over more effective solutions, like replacing asbestos. The Lautenberg Act deletes that clause. Importantly, the Act will require that EPA actually affirm the safety of new chemicals and manage them to meet the new public health standard, something people haven't been talking about today.

Provisions in the Lautenberg Act would open up vast quantities of chemical information, much of which never should have been declared confidential in the first place, or information for which that claim is now outdated. As a former California State regulator, I strongly support the provision allowing EPA to share this data with States, something we were not allowed to do when I was at the EPA.

In 1994, I called for a clear agenda and deadlines for the EPA and TSCA. The proposed legislation includes deadlines for prioritization, safety assessment and regulation, as well as a reasonable transition plan. I thank you for having undertaken the hard work of negotiating a provision enabling EPA to not only

collect fees but also to actually use eh fees they collect. Bravo for that. I appreciate your hands-ff approach to how EPA uses regulatory science in the context of the program and ask that you do not freeze the science by injecting 2015 standards into a law that needs to work for us for a number of years.

I appreciate that the actions States have taken to date and actions taken under Proposition 65 now and in the future would not be preempted by the Act. Also, the Act does not preempt State right to know efforts, something we haven't talked about, but a very important component of State activities.

But we do have to recognize the chemical industry as a multi-national enterprise and the need to take actions to protect people in all of our States, not just State by State, as well as the need to have actions that recognize what the downsides of those actions might be, such as replacement of bisphenol A with bisphenol S, a chemical about which we know very little but probably has similar toxicity.

Listening to the discussion here today, there is probably more work that is needed to do to strike the right balance in terms of preemption. I certainly am sympathetic to arguments that States can be strong co-enforcers with the EPA. I think that is an issue that will need further discussion.

Other areas that I would note is that I think Congress could set more aggressive but realistic expectations for EPA's

productivity, as well as taking advantage of this reauthorization to participate in the global Stockholm and Rotterdam Chemical Conventions. Twenty-one years ago, there were TSCA hearings. Everyone declared it was too complicated and everyone walked away for nearly a generation. You have heard many statistics describing this pace of chemical regulation under TSCA. But there is a human cost to inaction. Since 1976, 149 million babies were born in this Country. Three percent of them had birth defects and more than 10 percent were born pre-term. Eighty-six million people have died in the U.S. since that time, more than 25 percent from cancer.

Each of us has our own ideas about what a perfect TSCA would look like. But I don't want to be facing another Senate committee 20 years from now giving the same testimony about this 60-year old law. Nor do I want to have to tell my daughter that she and her future children would not have a greater level of protection because we failed to pass a good, even if not a perfect, law.

I thank you all for our willingness to work together and I wish you the best in finding a path forward.

[The prepared statement of Dr. Goldman follows:]

Senator Inhofe. Thank you, Dr. Goldman.

Dr. McCabe?

STATEMENT OF EDWARD McCABE, M.D., SENIOR VICE PRESIDENT AND CHIEF  
MEDICAL OFFICER, MARCH OF DIMES FOUNDATION

Dr. McCabe. Chairman Inhofe, Ranking Member Boxer and members of the committee, thank you for the invitation to testify at this critical hearing. My name is Ed McCabe, and I am a pediatrician and geneticist serving as Senior Vice President and Chief Medical Officer of the March of Dimes Foundation. We appreciate this opportunity to testify today on the critical issue of protecting Americans and specifically vulnerable populations like pregnant women, children and infants from toxic chemicals.

Unfortunately, the current Federal framework for the regulation of toxic substances is badly antiquated. As others have said, TSCA represents the last meaningful and comprehensive action taken in the field. The now outdated rules constructed in 1976 still govern the introduction and use of chemicals today, even though science has advanced in ways almost unimaginable at its passage.

The safe management of toxic substances is especially important to pregnant women and children because they are more vulnerable to the potential dangers. Ample reason exists for concern that the developing fetus, newborn and young child are at increased risk of health consequences from chemical exposure. Given their increased vulnerabilities, pregnant women and

children must be given an additional margin of protection beyond other populations.

The legislation before the committee today, developed by Senators Tom Udall and David Vitter, and co-sponsored by numerous other Senators, including the Chairman, represents a critical step forward toward establishing a system of chemical regulation that will be protective of maternal and child health. This bipartisan effort is commendable, and the March of Dimes would like to extend our appreciation to each of you for your roles in this work.

As this committee considers chemical reform legislation, the March of Dimes would like to share with you four principles that we believe are essential to the successful reform of America's system of regulating toxic chemicals. Legislation that meets these principles would represent a vast improvement in chemical safety for children and families everywhere.

Legislation should specifically protect the health of pregnant women, infants and children. As I noted, these populations are especially vulnerable to toxic substances, and a meaningful chemicals reform legislation must recognize the elevated risks posed by some chemicals for maternal and child health and incorporate special protection for these groups.

Number two, legislation should establish an efficient and effective system and timetable for prioritizing and assessing

chemicals. Given that over 80,000 chemicals are currently in commerce across our Nation, reform legislation must establish a sensible, practical framework for the appropriate prioritization and assessment of chemicals in a timely fashion. A system that allows for indefinite time frames and evaluation of only small numbers of chemicals will fail to protect the health of pregnant women and children.

Number three, legislation should include a mechanism for requiring the generation of scientific data if existing data are insufficient to determine the safety of a substance. Under the current failed system, chemical manufacturers have a disincentive to study the impact of their products, which is antithetical both to transparency and to the public's health. In order to conduct appropriate safety assessments, the government must have the ability to require studies be conducted to produce data on safety especially related to maternal and child health.

And finally, number four, legislation should provide timely access to chemical information for health care providers and first responders in critical circumstances. Health care providers and first responders must have immediate access to vital chemical information when they respond to known or suspected exposures, both to treat their patients and to protect themselves. Reform legislation must ensure that those who may be risking their own health to assist others must have the

information necessary to make informed decisions.

In conclusion, reforming the framework under which the U.S. regulates chemicals and potentially toxic substances is critical and long overdue. Today, a real solution appears to be within reach. On behalf of the March of Dimes, I thank you, Mr. Chairman, as well as Senators Udall and Vitter, for our hard work, reaching across the aisle and working to address the needs and concerns of many stakeholders. The March of Dimes stands ready to be a partner and resource as Congress works to produce a successful reform bill that protects the health of all Americans, including our vulnerable women, infants and children.

Thank you for the opportunity to testify.

[The prepared statement of Dr. McCabe follows:]

Senator Inhofe. Thank you, Dr. McCabe.

Dr. Dennison?

STATEMENT OF RICHARD A DENISON, PH.D., LEAD SENIOR SCIENTIST,  
ENVIRONMENTAL DEFENSE FUND

Mr. Denison. Thank you, Chairman Inhofe, Ranking Member Boxer and other members of the committee.

The Environmental Defense Fund has been working to reform this badly-broken and outdated law for 20 years, and I have personally for the past 15 years. That is why EDF supports the Lautenberg Act as a solid compromise that fixes the biggest problems in the current law, is health protective and has the strong bipartisan support necessary to become law.

This legislation did not arise suddenly in this Congress. It is actually the culmination of a decade of hard work by the late Senator Frank Lautenberg, who had the courage to recognize that we would not get reform without opening up a bipartisan path. Since he and Senator Vitter introduced their bill, the first bipartisan TSCA reform bill, in 2013, Senator Udall has led negotiations with Senator Vitter and has steadily and significantly strengthened the bill's health protections. They have worked tirelessly to listen to and incorporate input from other members and from hundreds of stakeholders.

The need for reforming this law is urgent. It has been pointed out that it has been almost 40 years since the core provisions have been touched. Americans have been exposed, meanwhile, to hundreds and thousands of chemicals every day and

only a small fraction have ever been adequately reviewed. EPA cannot, under the law, regulate even known dangers like lead, formaldehyde and asbestos.

The law has not kept up with science. It is increasingly linking common chemicals to cancer, infertility, diabetes, Parkinson's and other illnesses. Pregnant women, infants and children are especially vulnerable, as Drs. McCabe and Goldman have pointed out.

I have spent much of my professional career pressing EPA to act under this flawed law. I have been on the opposite side of the table from the chemical industry on nearly every issue. But rare political circumstances have opened a narrow window to pass meaningful reform. That is because the industry has finally realized that they need a stronger Federal system in order to restore Americans' confidence in the safety of chemicals.

We believe that Congress now has the best chance in a generation to bring this law into the 21<sup>st</sup> century. And let me just mention a couple of the things that it does.

It mandates safety reviews for all of those chemicals that TSCA grandfathered in 40 years ago and for new chemicals before they can enter the market. It explicitly requires that when EPA judges the safety of a chemical and regulates it, it ensures the protection of vulnerable populations. It makes far more information available about chemicals by limiting the ability of

companies to declare that information confidential.

None of the provisions in the bill are perfect, from our perspective. Indeed, most of them clearly represent compromises. But taken individually and collectively, they are much more protective than the current law.

Let me briefly turn to the most contentious issue in this debate: preemption. Striking the right balance has proven to be both exceedingly difficult and critical to garnering bipartisan support needed to actually pass a law. The bill is more preemptive than current law. But it is much less preemptive than the original bill.

All State actions before 2015 would be grandfathered in, regardless of what EPA does later. State actions taken after 2015 remain in effect until and unless EPA identifies a chemical and starts an assessment and completes that assessment. Those actions stay on the books. That assessment has to address the same uses and the same environmental concerns in order for it to preempt State action.

Low priority designations are no longer preemptive. Once EPA initiates and sets the scope of an assessment, it is true that new actions by States could not be taken. However, those existing actions would remain in effect until the end of that process.

Finally, even after EPA takes final action on a chemical,

Federal preemption is limited in certain very important ways. Only restrictions by States are preempted. Other types of requirements, for reporting, assessment, monitoring and the like, are never preempted. And only State restrictions on uses and concerns that are within the scope of EPA's review and determination are preempted. States can still regulate a chemical for other uses and to address other concerns.

Now, it needs to be noted that the current patchwork of State regulations and laws, which we have strongly supported, cover only a small number of chemicals and reach only a fraction of the American public. While nearly 200 actions have been taken by States to restrict chemicals, those actions have only restricted about a dozen chemicals or chemical categories. There is a huge problem we have that demands a Federal solution.

Let me conclude with this. The failures of TSCA are a serious and growing calamity, and Congress needs to act now. We simply can't afford to have the best opportunity to reform this law squandered. Thank you.

[The prepared statement of Mr. Denison follows:]

Senator Inhofe. Thank you, all of you, for your excellent and thoughtful and timely statements.

I am going to ask some basic questions to each one of you, even though your testimony probably would have already told us what your answer is going to be. I just want to make sure it is out there, so that we can get these principal positions on record.

Dr. Denison, you have 15 years invested in this thing right now. You as an individual and then I will as if EDF has the same position, do you have an official position supporting or opposing this bill?

Mr. Denison. Senator, I personally and EDF supports this legislation as a solid compromise.

Senator Inhofe. Thank you. Dr. McCabe, what about the March of Dimes?

Dr. McCabe. The March of Dimes has not endorsed this legislation, but we support the beginning of a dialogue. We think it is time, it is 40 years. I was a resident 40 years ago, and those in the room can see that was a long time ago. Our vulnerable women, children and infants deserve this. So we support the law, we think it is an important place to start, but there is a long way to go.

Senator Inhofe. That is very good, thank you.

Dr. Goldman?

Dr. Goldman. Yes, I think as you heard from my testimony, I do support this legislation, at the same time recognizing that there are avenues that could be taken to make it stronger.

Senator Inhofe. I see. And General Frosh, does the State of Maryland have a position on this bill?

Mr. Frosh. Mr. Chairman, I am speaking for myself as attorney general.

Senator Inhofe. So that answer is no?

Mr. Frosh. I do not support it with the preemption provisions.

Senator Inhofe. I see. Mr. Cook, I think we know what your answer is.

Mr. Cook. Yes, Mr. Chairman, I come from the environmental wing of the environmental movement.

[Laughter.]

Mr. Cook. I do not support this legislation personally. EWG does not, and I can't name any other major national environmental group that does.

Senator Inhofe. Thank you, Mr. Cook. Dr. Denison, do you believe this bill represents a significant improvement over current law?

Mr. Denison. Yes, Senator, I do.

Senator Inhofe. How about you, Dr. McCabe?

Dr. McCabe. Yes. That is the substance of my testimony.

Senator Inhofe. Dr. Goldman?

Dr. Goldman. I do think it does.

Senator Inhofe. And Dr. Denison, do you believe this bill significantly increases protections to public health, including for the most vulnerable, like children and pregnant women?

Mr. Denison. I do, Mr. Chairman.

Senator Inhofe. Dr. McCabe?

Dr. McCabe. Yes, Mr. Chairman.

Senator Inhofe. Dr. Goldman?

Dr. Goldman. Yes.

Senator Inhofe. This question would be for Dr. Denison and Dr. Goldman. If Congress fails to pass a bipartisan TSCA reform bill, what are the chances of all Americans being protected from chemicals like asbestos?

Mr. Denison. Mr. Chairman, I believe those prospects are very low.

Dr. Goldman. Thank you. I believe we would continue to see the same pace of progress that we have seen since 1976.

Senator Inhofe. Thank you. Senator Boxer?

Senator Boxer. Thanks, Mr. Chairman, very much.

Dr. Goldman, am I correct in assuming you would not support a bill that you believe was worse than current law?

Dr. Goldman. You are absolutely correct.

Senator Boxer. Okay. So I hope you will read the letters I

will put in the record of the leading health experts, not chemical companies or anyone affiliated with them, who say this is worse than current law. I am not asking you about it, I am just going to ask if you will read those letters and be back to me with your reasons for opposing them.

Dr. Goldman. I will read those.

Senator Boxer. Thank you very much. And please let me know, because I don't understand why you are doing this, given the tremendous opposition of the whole environmental community, the health community, the breast cancer folks, the autism folks. It just doesn't add up. But I want you to read it and let me know.

Dr. Goldman, Attorney General Frosh said in his statement that this bill, S. 697, imposes a tangled web of preemption that ties States' hands at every turn. He is sitting next to you, he is doing his job, this is his view. Nine attorneys general who represent more than a majority of the Country agree with him in that.

Since you are a physician and not an attorney and you know this bill is going to be negotiated, do you think going forward that the concerns of the attorneys general should be considered as we move forward?

Dr. Goldman. I think I said in my oral testimony that I think the right balance needs to be struck.

Senator Boxer. If you could just say, I am asking yes or no. Do you think these nine attorneys general's views should be considered as we move forward?

Dr. Goldman. Congress should consider their views.

Senator Boxer. Thank you very much.

Mr. Cook, recent reports indicated that floor boards that were imported from China contained high levels of formaldehyde, a known carcinogen. I don't think there is an argument about that. Do you agree that the Vitter-Udall bill would make it harder for EPA to intercept imported products containing dangerous chemicals like this? I am talking about, I think it is Section 14, is that right?

Mr. Cook. I agree that that is the case.

Senator Boxer. Because it really undermines the authority of EPA to intercept imported products that contain unsafe chemicals, is that correct?

Mr. Cook. That is correct.

Senator Boxer. So anyone who sits here and says this is better than current law, I urge you, Dr. Denison and Dr. McCabe and Dr. Goldman, to look at this. Because right off the bat, these products are going to get into the Country.

On preemption, Mr. Denison, you authored a paper, and I am quoting from it: "Federal policy reform should establish floors, not ceilings, for State government action and should only

preclude State actions that are less protective of health." Do you still stand by your statement?

Mr. Denison. Senator Boxer, that was a statement I made in 2009.

Senator Boxer. Yes, and I am going to put it into the record, without objection.

[The referenced information follows:]

Mr. Denison. Yes. You were chair of this committee at that time.

Senator Boxer. I just want to know if you stand by it. I don't have a lot of time to talk about it.

Mr. Denison. I supported those statements then and I still support them. But the protections they provide would only be realized if we actually get a law put in place.

Senator Boxer. Very important. Because here is the deal. The people who are experts in the law that are advising all of the public health groups and people that don't have a financial interest in this say that this bill is worse than current law and on top of it, it preempts. And this preemption, you have heard the word a lot of times, this preemption is a fatal flaw of this bill if you care about people. And these attorneys general have come in, and by the way, they didn't even get to see the draft document of the bill until maybe a week ago. And we are continuing to get documents in here.

We just heard from the business community, Sustainable Business Council. I ask unanimous consent to place that into the record. And of course I don't have it in my hand.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Boxer. Thank you. But this is over 100 businesses who are lamenting this bill, lamenting this bill, because they are trying to get people away from dangerous chemicals.

Mr. Frosh, some attorneys general have argued the Udall-Vitter bill preemption provisions could apply to much more than State toxics laws, and could also preempt States' clean air, clean water or other environmental laws. Would preemption of State air and water laws have a serious impact on a State's ability to protect their citizens from all types of pollution?

Mr. Frosh. Absolutely it would.

Senator Boxer. Okay. Well, this is an area we need to look at.

Mr. Cook, I want to ask you something, it is very important. Because Senator Vitter talked about deadlines. I am sorry, it was another Senator, I can't remember which one. Yes, there are deadlines for studying about 25 chemicals over a seven-year period, and at that time they have to make a decision. But as far as I can tell from the experts looking at this, there is no deadline for actual implementation or action on any chemical. Do you agree with that?

Mr. Cook. That is our interpretation as well, Senator.

Senator Boxer. Okay. Let it be clear. There is not one deadline in this bill that requires any action. There is no mention of asbestos. The same core test is put forward in this

bill that resulted in asbestos being left as an orphan child. It is a sad situation for us, and I pray, honestly I pray and hope we can fix this bill. We can do it, the New York Times laid out some great ways to start. Let's get with it, because we have tried for a very long time and haven't succeeded.

Senator Inhofe. Thank you, Senator Boxer. Senator Vitter?  
Senator Vitter? Thank you, Mr. Chair.

When TSCA was first passed, it was actually done through the Commerce Committee, primarily because unlike other environmental laws that regulate pollutants, TSCA actually regulates products all over the Country and the world, an authority that is granted to the Federal Government by the Interstate Commerce Clause. In fact, most products, including pharmaceuticals, medical devices, food, consumer products, are regulated by the Federal Government under statutes with strong preemption language.

Therefore, there is little to no State activity in those areas, yet I don't believe anyone is complaining that we are trampling on States' rights or that is a horrible situation.

Now, I have here what we are going to show you, a couple of maps, actually put out last week by one of our witnesses, the Environmental Working Group. They put out these two maps, among a few others, I think there were six total, meant to illustrate that States are leading when it comes to chemical regulation.

Before anyone asks, no, we have not doctored or changed

these maps at all. That is what the Environmental Working Group put out. Two of the examples they used to show that States are somehow leading the way.

Now, in my opinion, when you look at maps like this, it absolutely shows us why we have to fix TSCA through a strong bipartisan compromise like Udall-Vitter. These maps show that only one State has regulated these two different chemicals in question, only a few others are even considering legislation or regulation. Americans in 49 of the 50 States have no protections at the State or Federal level.

So based on these maps, I want to ask Dr. Denison and Dr. Goldman, would you say that they help exemplify why we need a strong, meaningful Federal system? Mr. Denison?

Mr. Denison. Senator, I think they are illustrative of the fact that States have been trying to fill a Federal void for a long time, but there are limits to what States can do. We need a strong Federal system that fills in that map.

Senator Vitter. Dr. Goldman?

Dr. Goldman. EPA has been trying to regulate formaldehyde at least since 1981, to my knowledge. So that is, how many years that there has been the opportunity for State by State regulation to occur? And it just hasn't been done effectively, because it takes a lot of resources to do it. Very few States have the budget to be able to do this kind of work, having done it.

Senator Vitter. Right. And let me ask you both, with the new fee structure and the new authority and enhanced powers given the EPA under Udall-Vitter, don't we have a much better chance of achieving broader protection of public health than we have now?

Mr. Denison. I believe we do, Senator. I do want to emphasize that this is a huge problem. TSCA dug a very deep hole and we have thousands and thousands of chemicals to work our way through. But we have to get started and we have to empower EPA and give it the resources to do this job.

Senator Vitter. Dr. Goldman?

Dr. Goldman. Yes. I would say yes to your question.

Senator Vitter. Okay. Also talking about preemption, Mr. Frosh, every State, State of Maryland included, is regularly preempted from laws, Federal laws governing products in commerce. Should Maryland be able to regulate drugs, for instance, prescription drugs, where they are regularly preempted by the FDA's authority?

Mr. Frosh. What I would say, Senator, is that when you are talking about poison, and that is what we are talking about here, States ought to have the right to regulate, especially where you see the kind of good luck that those charts that you just held up demonstrate.

Senator Vitter. Mr. Frosh, aren't some drugs, improperly used, poison?

Mr. Frosh. Certainly they are.

Senator Vitter. DO you oppose the current system whereby drugs are regulated through complete preemption by the FDA?

Mr. Frosh. I think FDA has done a pretty good job in acting in a timely fashion on approval of drugs.

Senator Vitter. You don't oppose that system, which is built on strong Federal preemption?

Mr. Frosh. I think EPA doesn't share that record of action. When you are talking about poisons, the States ought to have the ability to protect their citizens.

Senator Vitter. Okay. Mr. Denison, there has been this attempt over and over to somehow characterize this as a pure industry bill with somehow no support among groups that care about public health and safety, environmental protection, et cetera. Do you agree with that characterization?

Mr. Denison. I do not, Senator. I would not try to characterize the positions of my colleagues in the environmental community, except to say that I know there is a range of views and a very significant spectrum between myself and Mr. Cook. I will say that many groups support many of the provisions and especially the improvements that you and Senator Udall have made. But they are withholding support to try to get additional improvements. I understand that.

Senator Vitter. Okay. Dr. McCabe, sort of along the same

lines, do you believe that somehow you and March of Dimes are alone in the public health community interested in moving forward with a meaningful bipartisan bill like Udall-Vitter?

Dr. McCabe. No, we are not alone. We signed a letter of support with our colleagues, the American Society for Reproductive Medicine, the American Congress of OB-GYN, and the Society for Maternal-Fetal Medicine. So we know that we are not alone. We know that many groups feel that we need to move forward. We are at the beginning of this, but we need to move it forward.

Senator Vitter. Great, thank you.

I would just say in closing, Mr. Chairman, that that illustrates, I think, a robust, healthy debate, which is great. But it does not illustrate, in fact it disproves that somehow this notion that this is an industry bill and the whole public health community, the whole environmental community is opposed to it. That is just flat-out, factually wrong. I think a lot of people properly support the bill and a lot of people properly recognize that the alternative to this bill or something like this bill is the status quo. That is the only meaningful alternative in sight any time soon. We clearly need to do better. Udall-Vitter does much, much, much better. Thank you.

Senator Inhofe. Thank you, Senator Vitter. Senator Carper?

Senator Carper. Thanks, Mr. Chairman. To our witnesses, it

is good to see all of you. Thank you so much for joining us. To my neighbor from Maryland, welcome, it is good to have you here today.

Dr. Denison, are you familiar with a letter, I mentioned one letter I sent about 13 months ago to a number of my colleagues, about 10 of them, to Senator Vitter, outlining nine changes we would like to see made in the bill? And all those have actually been made. But are you familiar with the letter I sent, I think last week, in which I mentioned three ideas, three issues that needed to be addressed?

Mr. Denison. Yes, Senator, I am.

Senator Carper. And your thoughts on those, please?

Mr. Denison. Yes. I believe you mentioned the issue of co-enforcement that has been raised. I believe that is a legitimate concern and I think there is middle ground to be found. I believe a couple of your suggestions were good ones. The concern on the industry side is that a State might do something inconsistent with the Federal requirement. EPA could issue guidance to clarify how that requirement is to be imposed by a State. There could be an appeals process.

So I am troubled by that provision. It is one of the provisions I don't like in an overall package I do support. I think some additional work on that would be appropriate.

Senator Carper. All right, thank you. I don't know if you

have had a chance to look at the letter that a number of us sent a year ago, where we outlined nine things where we would like to have changes made. Those have essentially been addressed, at least in our view. But in your opinion, does this legislation address that request of a year ago in a way that actually gives EPA new tools that it does not have under existing law in order to improve the protection of public health?

Mr. Denison. Yes, Senator. That letter was very helpful in sharpening the negotiations, I believe. I think there was effort, and successful effort, to address each of those points.

Senator Carper. All right, thank you. One of the points that I made in the letter that I sent last week deals with the State preemption issue. I highlighted that as an example of what we did in Dodd-Frank with respect to nationally chartered banks, and how nationally chartered banks didn't want States to pass laws, they didn't want State legislators and governors and attorneys general telling them what to do.

We were able to find some consensus in the way that I laid out, where the Consumer Protection Bureau that we have in Federal law was able to play a role, provide regulations that were endorsed by the, rather, implemented and overseen by the attorneys general. Do you think if we could do that in Dodd-Frank that maybe there is a way to thread the needle here as well?

Mr. Denison. I do, Senator. That is a useful, although I am not that familiar with that particular case. But I think looking at models in other statutes, the pesticide law, for example, has another model for, seminal for the States in enforcement.

Senator Carper. Attorney General Frosh, we are going to be looking to you, you don't have to respond now, but we certainly want to have a good conversation with you and our own attorney general and others as well.

Dr. Goldman, you wrote eloquently in your testimony about the cost of inaction as a consequence of a failure to have a functional Federal toxics law. It is a testament to the idea of States as laboratories of democracy that several States have forged ahead with toxics laws in absence of a Federal system. Other States like my own State, Delaware, we don't have the capacity or the resources to run a robust State toxics program and we depend on EPA.

How will having a Federal program help to reduce the impact of toxic exposure for people like those who live in my State and some other States? What would be the cost of inaction?

Dr. Goldman. I think that how people in your State would be benefitted is by raising the floor, having a stronger safety standard that would have to apply everywhere in the Country. And also that when new chemicals come on the market that EPA would

have to actually affirm that those new chemicals meet that standard. Right now, if EPA doesn't act in 90 days, automatically the chemical enters the market. This bill would tell the EPA, no, you must affirm that it needs the new standard and that it is a health-based standard. It is not a standard for cost-benefit balancing as it is today.

Senator Carper. All right, thank you.

Colleagues, I would just say, two floors down is the committee room in which the Finance Committee meets. I serve on the Finance Committee. About three years ago we were having a hearing on deficit reduction, and we had some really smart people, brilliant people like we have here today, whose job was to come and tell us what they thought we should do further on deficit reduction.

One of the witnesses was a fellow, Alan Blinder, who used to be vice chairman of the Federal Reserve, he is now a professor of economics at Princeton. He said in his testimony, he said the key to deficit reduction is health care, getting health care costs reined in. He said if we don't do something about that, we are doomed. When it came time to ask questions, I asked him this question. I said, Dr. Blinder, you say the key to deficit reduction is health care costs, and if we don't do something about it, we are doomed. What would you suggest we do? That is what I asked him, what do you suggest we do. He thought for a

minute and he said, you know, I am not an expert on this, I am not an economist. But if I were in your shoes, here is what I would do: find out what works; do more of that. That is all he said.

We know what doesn't work. And it is this law we have had for 40 years. We have a lot of good ideas here, we talked about them today, that would actually make it work a whole lot better. We need to pursue those. As we say in Delaware, the only two words in Latin I know are *carpe diem*, or *Carper diem*, seize the day. That day has come.

Senator Inhofe. Thank you, Senator Carper.

Before everyone leaves here, we are going to leave the record open for questions for the record for two weeks, without objection.

Senator Markey?

Senator Markey. Thank you, Mr. Chairman, very much.

This is another chart that was in that same study. So while only a few States may have acted on formaldehyde or triclosan, there are 169 laws adopted in 35 States that worked to limit, label and manage dangerous chemicals. This is from that same data base. For mercury alone, half the States have acted to protect against that exposure. Why is State action important? Well, when a State bans the use of a chemical like BPA in baby toys, companies work to reformulate the product, to comply and

sell these products. Because then nationwide, all children benefit when one State acts. So we should not in any way downplay the role the States play here. Once States act on any of these things, the whole industry has to rethink if the rest of the Nation, at a State level, is going to move.

Dr. Denison, in 2013, you testified on an earlier version of this bill in the House. During that hearing you said that any trigger for State preemption on a chemical "should occur at the final action of the agency, which could mean either that EPA finds the chemical to be safe or that EPA promulgates a rule that restricts the use of that chemical." Do you still stand by that statement?

Mr. Denison. I did say that, Senator, and I do believe that that would be the preferable approach.

Senator Markey. Okay, thank you. Now, Mr. Frosh's testimony states the Udall-Vitter bill "includes the near evisceration of State authority to regulate toxic chemicals. For example, the bill prohibits States from taking action on any chemical that EPA has started to study, even though that could create a regulatory black hole if EPA never takes any action on that chemical. The States would not be regulating, the EPA would not be regulating."

Do any of you disagree that the protections against toxic chemicals that the bill is intended to create would be made

stronger if the State preemption provisions were removed?

Mr. Denison. Senator, I believe that the only way we get the protections that this bill offers is if it gets enacted into law. That means, in my view that -

Senator Markey. I didn't say that. Would the bill be stronger if these preemption standards were taken out? Would the bill be stronger? That is all I want to know.

Mr. Denison. The law would not be stronger -

Senator Markey. I don't need your political judgment. I am not looking for your political judgment. I need your technical judgment. Would the bill be stronger?

Mr. Denison. If it could pass into law, yes.

Senator Markey. Okay, thank you. Yes. Doctor? Yes or no?

Dr. McCabe. This is not my area of expertise. It is not in pediatrics or genetics.

Senator Markey. We will come back the other way. Mr. Cook?

Mr. Cook. Yes, it unquestionably would be stronger.

Senator Markey. Attorney General?

Mr. Frosh. Absolutely, Senator.

Dr. Goldman. I would agree with the other statements.

Senator Markey. Mr. Cook, the Udall-Vitter bill says that EPA can have a total of 12 years to complete work on the first 25 high priority chemicals. That means it will take over 100 years to complete work on the 1,000 chemicals EPA has said were in most

need of assessment. Do you think that a strong Federal program should include a requirement that the resources to study the safety of more chemicals, more quickly, is included simultaneously?

Mr. Cook. Yes. I think it is vital that we have a faster pace and get more done.

Senator Markey. Do any of the rest of you disagree that the more quickly EPA can act to assess chemical risks and acquire needed regulations, the faster the public will be protected from exposures to chemicals that turn out to be unsafe?

Dr. Goldman. I stated in my testimony that Congress could have a higher level of expectation on the pace of effort by EPA.

Senator Markey. Do any of you disagree with that comment?

Mr. Cook. No, sir.

Senator Markey. Okay, thank you.

Mr. Denison. Senator, I don't disagree, but I would say that there is a balance that needs to be struck. Because we otherwise could have poor assessments done or have EPA finding chemicals they can do quickly rather than those that need the most attention.

Senator Markey. No one disagrees. No one disagrees. The Udall-Vitter bill makes it more difficult for EPA to regulate a chemical in a product like furniture or clothing, even after EPA has found that the chemical is unsafe. For example, flame

retardant chemicals are found in everything from carpets to couches to clothing. If EPA finds that flame retardants are dangerous under the bill, EPA would have to assess every product that contains them separately. It is not even clear that EPA could assess the use of flame retardants in all clothing or in all furniture. It might have to assess each type of clothing and each type of furniture separately.

Mr. Cook, do you agree that this will lead to delays in EPA's ability to remove or restrict known dangers from products that children use, wear or are otherwise exposed to, and that this language should be removed?

Mr. Cook. Senator, I am from California. Those are the La Brea tar pits of slowdown in process that you have just mentioned. Yes, it will be very bad.

Senator Markey. Thank you, Mr. Chairman.

Senator Inhofe. Senator Whitehouse?

Senator Whitehouse. Thank you, Chairman.

Let me start with my, I guess he is not my colleague, because I am not attorney general any longer, but I am always pleased to see attorneys general here.

Attorney General Frosh, you are obviously familiar with the administrative rulemaking process, which has commonalities at the State and Federal level. Are there ways in which a participant, particularly a large industry participant in an administrative

rulemaking process, can drag it out, make it take longer?

Mr. Frosh. Senator, as one of your alumni once said, I am just a country lawyer, but I can tie you up in knots in the administrative process for years. Yes.

Senator Whitehouse. So it is within the control of the chemical industry to a significant degree how long, what I call this death zone, is, in which no one is allowed to regulate a chemical that is in the high risk category?

Mr. Frosh. That is absolutely right.

Senator Whitehouse. I think that is something that we need to deal with. Dr. Denison, you have said that EPA needs the resources to do this job. I sit on the Environmental and Public Works Committee, I also sit on the Budget Committee where the other side of the aisle is constantly and relentlessly attacking the EPW budget, EPA budget, and I think would dearly love to see the, at least certain folks would dearly love to see the agency largely disabled from enforcement. Why does it make sense to prevent State attorneys general and States from adopting identical legislation and a least having cops on the beat for a rule that we would then all agree is both common and necessary?

Mr. Denison. Senator, I have indicated already that that is an area of concern that I would to see more addressed as this bill moves forward.

Senator Whitehouse. Let me ask everybody a pretty simple

question. From the perspective of public health and safety, does every witness on this panel agree that this would be a better bill if there were co-enforcement by States so that enforcement is not at the mercy of EPA budgets that our colleague are relentlessly attacking, and no what I call death zone, in which there is no one who can put in a regulation of a chemical that is by definition in the high risk category for as long as seven years and frankly sometimes perhaps longer, because sometimes things die at OMB well beyond what the rules allow?

Dr. Goldman. I could say I think co-enforcement would be an improvement. I also think preemption being triggered by a final agency action, which is what I think you are asking about with the second question, is also a good idea.

Senator Whitehouse. Does everybody agree?

Mr. Frosh. I certainly agree.

Mr. Cook. I agree.

Senator Whitehouse. Dr. McCabe?

Dr. McCabe. Yes. And it is important that we are having this bipartisan discussion.

Senator Whitehouse. Dr. Denison?

Mr. Denison. Yes, Senator.

Senator Whitehouse. Okay. So I think we can all agree that those things, we could probably go on with others, but I just focused on those two, since time is short in these hearings. But

it also strikes me that in these two areas, it would be very hard to articulate a legitimate industry objection. So I would like to offer anybody a chance to try to do that. Why should there be either no enforcement of a standard that the chemical industry has agreed to live by but just doesn't want to see enforced? That doesn't seem to be a legitimate industry interest. Nor does it seem a legitimate industry interest that there should be a period that they could manipulate lasting seven years or longer in which a predetermined high-risk, high-priority chemical can't be regulated by anyone?

Dr. Denison, what is the legitimate industry case for either of those, as opposed to just a spirit of compromise?

Mr. Denison. Senator, you need to ask the industry that question. I would say on enforcement, I think I have been clear. On the second one, that dead zone, as you describe it, could work in either direction. Because those decisions at the end of the process can be challenged by anyone.

So a challenge of a safe finding would also stretch out that period.

Senator Whitehouse. But if you are a chemical company and you have a chemical that you see, uh-oh, there are some problems coming out here, we are starting to see some evidence that it is carcinogenic or poisonous in some way, if you can get it onto the priority list and if you can get it onto the list of 25 and

start, get the assessment process started at EPA, which you can control by paying EPA to do that, you can then buy a potentially seven-year period whose length you can manipulate in which not only EPA but nobody else can regulate your chemical no matter how dangerous it is. Is that not a correct statement?

Mr. Denison. Senator, there is one inaccuracy there, which is, a company that requests EPA to prioritize their chemical that EPA has not itself prioritized, that decision to prioritize that chemical does not have a preemptive effect. That is a deliberate part of the law to prevent exactly what you are talking about.

Senator Whitehouse. So it is only where the industry has forced the choice. But if EPA has been convinced to do it through other reasons, then everything else that I said is accurate?

Mr. Denison. Senator, that is why there are statutorily enforceable deadlines for each and every step of that process along the way.

Senator Whitehouse. You ever see a recommendation stuck at OMB pass those deadlines?

Mr. Denison. I don't disagree that is a, there is delay that could happen, regardless of those deadlines.

Senator Whitehouse. My time is long exceeded. I appreciate the Chairman's courtesy.

Senator Inhofe. Senator Merkley?

Senator Merkley. I thank you all for your testimony. I think the gist of the conversation is that several different ways have been identified, that there seems to be considerable, unanimous support, as far as I could tell, in regard to the questions Senator Whitehouse was raising as to whether co-enforcement would make the bill better and whether stronger rules enabling States to act when the Fed has not yet put rules into place, there was change in the preemption provisions. I think I heard everyone respond yes. I just want to confirm that. Did I misunderstand? Everyone yes?

[Witnesses respond in the affirmative.]

Senator Merkley. Mr. Denison, yes?

Mr. Denison. Yes.

Senator Merkley. So another area where this bill changes is that under current rules, or under the current law, EPA has stronger ability to restrict the importation of articles that have egregious chemicals in them. And under this new version, it would be relying in good faith reliance on the MSDS, that is the Material Safety Data Sheet. Now, the MSDS are often absolutely incorrect in describing the chemicals that are in a product. By one study they are wrong somewhere between 30 to 100 percent of the time. And of the chemicals they do label, they often label far smaller quantities than the actual quantities provided.

Would you all agree that it would be better to have

provisions that give EPA a strong ability to regulate imports, rather than a good faith reliance on MSDSs which have been just time and time again shown to be wildly inaccurate?

Yes, Dr. Goldman?

Dr. Goldman. If I may say, I do think that is an area in the draft that needs to be examined. But I also should say that the only imports today that are restricted are the few chemicals that EPA has ever regulated. And not to overestimate the impacts of that provision in current law, which have had very little impact because of the fact that things like formaldehyde, which are imports, are not regulated by EPA. But I do think that that is something that is worth an evaluation to make sure it provides not only EPA but also Customs enforcement with reasonable authority.

Senator Merkley. Would anyone else like to comment on that, whether that would make it stronger?

Mr. Cook. I would agree that it needs to be much stronger.

Dr. McCabe. I would agree as well, Senator.

Senator Merkley. Okay. Thank you. I was reflecting on some of the debates we have had in Oregon over the inclusion of BPA in plastics, baby pacifiers and the nipples on baby bottles and so forth. We have also had a significant debate in Oregon over the use of BPA in the linings of cans for products. I was just reading an article as Senator Whitehouse was testifying how

a company in Oregon has this year been able to eliminate BPA from the cans. It is doing it voluntarily. I don't believe the law was passed in Oregon. I would have to double check that.

But the debate occurred because there was a State-focused discussion on this risk and this concern. And so we see this whether the State conversation is helping to drive a national conversation. I have a concern that if we have a law that basically says, States can't act, and by the way, a very, very slow Federal process, and by the way, when you finish that Federal process you can slightly change the chemical formulation and now you have to start the process all over again, that essentially you have a dysfunctional system only it is worse than the dysfunctional system we have right now. Because right now we have a dysfunctional Federal system with a possibility of State action. But under this law as framed at this moment, we have the possibility of a dysfunctional Federal system with no real opportunity for States to act.

So Mr. Cook, should I not have these concerns?

Mr. Cook. You should absolutely have these concerns. I mean, we have a contradiction here, right? On the one hand, people are testifying that despite all these State actions it really doesn't add up to much, not very many chemicals, doesn't mean anything. And on the other hand, the chemical industry is running here, asking for the first time ever for relief from all

these State actions that are causing such chaos.

So you are point on, sir. The issue is, the chemical industry has completely lost the faith of consumers. Completely. And justifiably, because they have been misled and worse, time and again. That has led consumers, constituents, to go to State legislators and ask for fixes. I am so grateful for the charts that Senator Vitter put up. I had a nice shot of them. We have so many other charts I would like to offer to staff. If you ever need charts from the Environmental Working Group, we are here at your disposal.

But the fact is, when those laws pass in the States, they send shock waves through the economy, shock waves through the chemical industry and they begin to respond. That is why they are here today.

Senator Merkley. Attorney General Frosh, I got a letter from my AG strongly, strongly concerned about the preemption of State activity. You are here to testify the same. Is this a widely-shared feeling among attorneys general across the Country? I realize it has been a very short time to respond.

Mr. Frosh. I believe it is, Senator. General Rosenblum is a leader. There are a number of other attorneys general who have submitted letters to this committee and share my strongly-held view that States should be allowed to protect their citizens.

Senator Merkley. Thank you very much. Thank you, Mr.

Chair.

Senator Inhofe. Thanks to all of you for appearing before the committee and your very thoughtful responses and your perseverance. Thank you for the time that you spent here. It has been very helpful.

We are going to leave the record open for two weeks. I would hope the staff would take note of that for questions to be sent in for the record.

Senator Boxer. Mr. Chairman, before we close down, as I had asked you, I have a number of letters to put into the record in opposition to the bill we have just discussed. One from the Catholic Health Association, EWG, one letter signed by the Advocates for Youth, the National Latina Institute for Reproductive Health, the National Infertility Association, the Union of Concerned Scientists. A whole host of professors from all over the Country, from north, south, east, west, who oppose this bill. The American Sustainable Business Council Action Fund, the Breast Cancer Fund, the Safer Chemicals Healthy Families Environmental Health Strategy Center, the Commonwealth of Massachusetts Office of Attorney General, letter signed by the New York, Iowa, Maine, Maryland, Oregon and Washington attorneys general. State of Washington Department of Ecology. A letter that I think is very instructive, signed by Safer States. Earth Justice. Seventh Generation. Center for Environmental Health.

CalEPA, the Office of the Attorney General, my attorney general, Kamala Harris. We have separate letters from them.

And I just want to say to you, thank you very much for this hearing. I think we have seen some consensus on this panel of how we can fix this flawed bill that the chemical companies love and hurts the people.

[The referenced information follows:]

Senator Inhofe. We are adjourned.

[Whereupon, at 12:35 p.m., the committee was adjourned.]