

Testimony of S. Michael Gentine
Before the
House Committee on Energy and Commerce
Subcommittee on Innovation, Data, and Commerce
U.S. House of Representatives
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Chairman Bilirakis, Vice Chair Walberg, Ranking Member Schakowsky, and Members of the Subcommittee, thank you for the opportunity to appear before you again. I am an attorney in the Consumer Products Practice Group at Arnold & Porter, and my practice focuses largely on matters to do with consumer product and motor vehicle safety, including practicing before the U.S. Consumer Product Safety Commission (CPSC), but my testimony today is in my personal capacity and may not represent the opinions of Arnold & Porter or any current or former clients.

The five CPSC-related topics before you today all touch on critical areas of CPSC policy, and the CPSC stakeholder community appreciates the Subcommittee's continued engagement and leadership on these vital issues. I would like to take this opportunity to focus on two of these bills, the Consumer Safety Technology Act (H.R. 4814) and the Virginia Graeme Baker Pool and Spa Safety Reauthorization Act (H.R. 5202).

Consumer Safety Technology Act (H.R. 4814)

CPSC is one of the best bargains in federal government. With a Fiscal Year 2023 budget of just \$152.5 million and 569 FTEs, the agency oversees the safety of thousands of categories of consumer products, ranging from strollers to all-terrain vehicles (ATVs), from cribs to adult portable bedrails. The agency's core mission is to protect American consumers from

unreasonable risks of injury associated with products across that sweeping jurisdiction. However, its mission also includes:

- Assisting consumers in evaluating the comparative safety of consumer products;
- Developing uniform safety standards for consumer products and minimizing conflicting State and local regulations; and
- Promoting research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.¹

That's an awful lot of crucial work to do in an awfully big space, more so for a relatively small agency. Identifying opportunities to maximize the efforts of CPSC's talented, dedicated staff of public servants is essential to each of those missions, and the Consumer Safety Technology Act is well-positioned to help CPSC do just that.

CPSC was created in 1972, and many of its core information-gathering tools have been serving the agency for much of that time. They have served well – the National Electronic Injury Surveillance System or NEISS provides incomparable data that are relied upon well beyond the CPSC community. However, CPSC's developing new tools to gather and analyze the breadth and depth of data that are available in the modern digital economy is essential to helping CPSC continue to adapt to a consumer-product marketplace that is almost unrecognizably different than the marketplace that existed fifty years ago.

In recent years, CPSC has taken important steps in this direction. Under the leadership of Commissioner Feldman and others, CPSC has added crucial staff leadership roles, such as a Chief Data Analytics Officer and a Chief Technologist. Bringing these skillsets to the service of

¹ 15 U.S.C. § 2051(b).

consumer safety was a significant step toward tomorrow's CPSC, and the pilot program envisioned in the Consumer Safety Technology Act would be another such step.

Title I of the Act directs CPSC to conduct a pilot program to evaluate the use of artificial intelligence in one or more of the following areas of CPSC activity:

- Tracking trends with respect to injuries involving consumer products.
- Identifying consumer product hazards.
- Monitoring the retail marketplace (including internet websites) for the sale of recalled consumer products (including both new and used products).
- Identifying consumer products required by section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) to be refused admission into the customs territory of the United States.

Developing additional sophisticated, automated tools to assist CPSC staff in gathering information in any or all of these areas would be invaluable to CPSC staff, allowing the agency to direct more of its resources toward *acting* on that information to advance consumer safety. For example, one of CPSC's current data tools, the Retailer Reporting Program, was created as its own pilot program in 2004, and the participants in that program provide CPSC staff with regular (generally weekly) updates of consumer reports that use any of a variety of safety-related keywords.

For an agency whose key data sources frequently suffer from substantial lag time, ranging from months to years, the near real-time data stream the Retailer Reporting Program offers stands apart. In addition to its speed, the depth and breadth of the Retailer Reporting Program are also uniquely promising for CPSC. Its keyword-based reporting criteria may help

CPSC identify trends among reported incidents that, individually, might not appear reportable and might not otherwise come to the agency's attention, while gathering data from retailers may help CPSC identify trends among products or product categories that might not be apparent at the manufacturer level.

However, in recent years, the Retailer Reporting Program has languished. This was partly the result of concern about the legal implications of program participation, but it is also a question of resources. Sifting the mountain of data the Retailer Reporting Program generates has been a largely manual process – collecting potential incident reports is a task that keyword searching can perform well, but determining which of those reports may merit further examination or agency action is work that has historically required the sophistication and nuance that are the hallmarks of the human mind. Developing and implementing modern AI technologies to help narrow the program's data stream could help CPSC better operationalize the real-time information it provides, and the Consumer Safety Technology Act's pilot program would be a great opportunity to do just that.

Virginia Graeme Baker Pool and Spa Safety Reauthorization Act (H.R. 5202)

First enacted in 2007, the Virginia Graeme Baker Pool and Spa Safety Act (VGBA)² sought not only to address tragic incidents related to pool drains but to reduce drowning and near-drowning incidents in public and residential pools. As part of its pursuit of this worthy goal, the VGBA created a grant program, whereby states that had or enacted laws requiring certain features in or around public and residential pools – such as barriers to prevent unsupervised access and pool drainage systems that comply with the VGBA's drain provisions – could receive

² 15 U.S.C. §§ 8001-08.

federal funds to hire personnel to enforce those laws and to conduct educational campaigns to reduce drowning risks. That grant program was later expanded to include local and tribal governments.

Despite this historic effort – including the awarding of millions of dollars in grants to state, local, and tribal governments across the country and the creation of CPSC’s “Pool Safely” program – drowning remains the leading cause of death among children ages 1 to 4,³ with an average of 371 pool- or spa-related fatal drownings between 2018 and 2020. Even more troubling, 2020 represented a 10 percent increase in such fatal drownings over 2019.

While there are some steps that can be taken to reduce this number through the design and construction of pools and spas and their surroundings – such as CPSC’s enforcement of the drain-cover provisions of the VGBA and states’ adoption of appropriate code provisions – education remains the primary tool to reduce drownings. While CPSC can and does create materials to help further that education, such as tools to encourage early swim lessons and to remind adults that supervision is essential, it is that CPSC partner with organizations on the ground to deliver that education.

The reauthorization before this subcommittee not only continues but builds upon the work the VGBA has done over the last 16 years. Most notably, the reauthorization adds qualified nonprofit organizations to the list of covered entities eligible to apply for and receive grant funds. While state, local, and tribal governments are essential partners in drowning prevention,

³ Press Release, U.S. Consumer Prod. Safety Comm’n, “CPSC Issues New Drowning Report with Child Fatalities; Reminder for Extra Water Safety Vigilance,” ¶ 1 (June 8, 2023), *available at* <https://www.cpsc.gov/Newsroom/News-Releases/2023/CPSC-Issues-New-Drowning-Report-with-Child-Fatalities-Reminder-for-Extra-Water-Safety-Vigilance>.

expanding the universe of potential VGBA grant recipients to include nonprofits with proven experience in this space will bring new and skilled allies to bear.

The reauthorization also directs CPSC to consider whether an applicant proposes to use funds to carry out educational or other activities in geographic areas or communities that show disparities in drowning rates. CPSC prides itself on being a data-driven agency. As part of that, CPSC must follow the data, and the agency must spend its scarce resources – including the grant funds the VGBA authorizes – where those resources will do the most good.

Between the two, the Consumer Safety Technology Act and the Virginia Graeme Baker Pool and Spa Safety Reauthorization Act provide CPSC with tools the agency needs both to enhance its efficiency in tackling product safety issues across its jurisdiction and to redouble its efforts to address one of the most persistent hazards facing America's children. I appreciate the opportunity to address the subcommittee on these vital pieces of legislation, and I look forward to your questions.