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4 ``REGULATION OF EXISTING CHEMICALS AND THE ROLE OF PREEMPTION
5 UNDER SECTIONS 6 AND 18 OF THE TOXIC SUBSTANCES CONTROL ACT''
6 WEDNESDAY, SEPTEMBER 18, 2013
7 House of Representatives,
8 Subcommittee on Environment and the Economy
9 Committee on Energy and Commerce
10 Washington, D.C.

11 The Subcommittee met, pursuant to call, at 2:05 p.m., in
12 Room 2123 of the Rayburn House Office Building, Hon. John
13 Shimkus [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Shimkus, Murphy, Latta,
15 Harper, McKinley, Bilirakis, Johnson, Tonko, Pallone, Green,
16 DeGette, McNerney, Schakowsky, Barrow, and Waxman (ex

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17 officio).

18 Staff present: Nick Abraham, Legislative Clerk; Jerry
19 Couri, Senior Environmental Policy Advisor; David McCarthy,
20 Chief Counsel, Environment and the Economy; Andrew Powaleny,
21 Deputy Press Secretary; Chris Sarley, Policy Coordinator,
22 Environment and the Economy; Jackie Cohen, Democratic Senior
23 Counsel; Greg Dotson, Democratic Staff Director of Energy and
24 Environment; and Kara van Stralen, Democratic Policy Analyst.

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25 Mr. {Shimkus.} I call this subcommittee hearing to
26 order, and I want to thank you all for coming. I ask
27 unanimous consent that all members of the subcommittee have 5
28 days to submit their opening statements for the record, and I
29 recognize myself for 5 minutes.

30 Today's hearing continues the subcommittee's examination
31 of the Toxic Substances Control Act, including statutory
32 provisions, regulatory implementation, and practical
33 outcomes. On June 13, our subcommittee held a hearing on the
34 history and impact of Title I of TSCA. On July 11, the
35 subcommittee explored regulation of chemicals before they
36 enter commerce, under TSCA Section 5, and protection of
37 sensitive business information, under TSCA Section 14. I
38 believe these hearings have helped us understand a law as
39 complex as it is broad.

40 Our focus now is on regulation of chemicals once they
41 are in commerce, under TSCA Section 6, and the role of
42 federal pre-emption, under TSCA Section 18.

43 These two sections of TSCA have been subject to a great
44 deal of discussion. Notwithstanding the testimony of three

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45 of our witnesses at the July 11 hearing that TSCA Section 5
46 is doing a fine job reviewing and, if necessary, limiting the
47 use of new chemicals, some argue that TSCA is broken and
48 because TSCA Section 6 has not produced more bans or other
49 limits on chemicals. Others, including some on our panel
50 today, suggest that concern is overstated.

51 EPA has been more active issuing regulations on TSCA
52 Section 5 new chemicals than it has been on TSCA Section 6
53 ones, but it has issued regulations under Section 6. Charlie
54 Auer, who testified in our June 13 hearing stated that TSCA
55 Section 6 ``had surprising early success in efforts between
56 1978 and 1980.'' The question is: what has changed?

57 Today we explore just what TSCA Section 6 asks EPA,
58 including what ``unreasonable risk'' is and whether this is a
59 novel concept under federal law. We will also examine
60 requirements in the law regarding the application of ``least
61 burdensome'' regulations. We will study the role of risk
62 assessment and cost-benefit analysis, how and whether it is
63 done, and what role it plays in the final rulemaking
64 decision.

65 Understanding Section 6 and its link to the pre-emption

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66 provisions in TSCA Section 18 is also important. If EPA has
67 taken action to test a chemical or regulate a new existing
68 chemical in commerce, TSCA forecloses State action unless the
69 State or locality meets one of four criteria. In many areas
70 the States should handle local pollution issues, because they
71 have a wealth of experience and capability to do so. But
72 chemical regulation is not an area where States have
73 traditionally taken a lead role because of the impacts on
74 interstate commerce.

75 In our June TSCA hearing, witness Beth Bosley said TSCA
76 is a law about products, not pollution. TSCA vests EPA with
77 authority to regulate risks to humans and the environment
78 from chemicals that are not otherwise covered by some more
79 targeted statute. TSCA is about making interstate commerce
80 in chemicals work for all of us.

81 I thank all our witnesses for appearing today, and look
82 forward to their insights about the appropriate roles of the
83 parties and the uniqueness of TSCA in this respect. I urge
84 members to take today's opportunity to learn the fundamentals
85 of these Sections of the law.

86 And now I want to thank the panel. Once I get through

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87 with our opening statements, I will then do the introductions
88 of each one of you. We do appreciate you being here. There
89 is kind of an excitement of trying to address a 30-year-old
90 law that we haven't really revisited in many years. I spent
91 a lot of time during the break talking to various diverse
92 groups of interested parties, so I think it is an exciting
93 time and it really reinforces the need to at least have these
94 hearings, become more educated, learn from you all, and see
95 if we can move to bring a very old law kind of up to date.

96 [The prepared statement of Mr. Shimkus follows:]

97 ***** COMMITTEE INSERT *****

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|
198 Mr. {Shimkus.} With that, I would recognize the ranking
199 member from New York, Mr. Tonko, for 5 minutes.

100 Mr. {Tonko.} Thank you, Mr. Chair, and good afternoon.
101 Thank you, Chair Shimkus, for holding this important hearing.
102 Thank you to the members of our panel for participating and
103 sharing information. I am especially pleased to have Mr.
104 Srolovic from the New York State Attorney General's Office
105 here with us today. As one who served in the New York State
106 Assembly for 25 years, we work closely with the agency, so it
107 is good to have you here.

108 This afternoon, we will hear from witnesses on Section
109 6, the regulation of hazardous chemical substances and
110 mixtures, and on Section 18, preemption. As I observed in
111 previous hearings, and as we have heard from previous
112 witnesses, the Toxic Substances Control Act has not worked
113 well. We have too little information about many of the
114 chemicals we encounter every day. Even when it becomes
115 common knowledge that a chemical is harmful, the
116 Environmental Protection Agency does not have sufficient
117 authority to restrict or ban that chemical from the market.

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118 Under the current law, individual States retain
119 sufficient authority to act independently on behalf of their
120 citizens. Although some States' actions are not permissible
121 under Section 18 of the current law, it has been possible for
122 States like New York to take action to restrict or ban
123 harmful chemicals. In the absence of federal actions, States
124 have filled the void. States have used their authorities to
125 protect the public when chemicals are found to indeed cause
126 harm.

127 While it is good to know that State governments are
128 watching out for their citizens, the Federal Government
129 should be an active participant in this effort and be
130 providing a uniform level of protection for all citizens.
131 The major failings with current law have little to do with
132 the provisions that define the relationship between federal
133 and State action on toxic chemicals. They stem from the lack
134 of a strong safety standard to protect the public and our
135 environment. Section 6 of TSCA does not provide EPA with the
136 tools needed to ensure that chemicals in commerce are safe.

137 I am sure we will hear more about Section 6 and its
138 failings from some of our witnesses today. Chemicals that

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139 are harmful should be removed from the market and make way
140 for safer alternatives. Revision of this law is long
141 overdue. I hope we will be able to make changes that will
142 provide the assurances of safety desired by the public and
143 the incentive for innovation and regulatory certainty needed
144 by industry.

145 Thank you again, Mr. Chair, for holding this important
146 hearing. We have another fine group of witnesses on this
147 panel this afternoon, and I thank you all for participating
148 in this hearing. I look forward to hearing your testimony,
149 and with that, I yield back.

150 [The prepared statement of Mr. Tonko follows:]

151 ***** COMMITTEE INSERT *****

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|
152 Mr. {Shimkus.} Gentleman yields back his time. The
153 chair seeks anyone on the Majority side for an opening
154 statement. Seeing none, chair looks to the Minority side.
155 Seeing no member interested in an opening statement, we will
156 turn to you all.

157 I just hearken back to my opening statement and trying
158 to sort out the different sections and what they are doing
159 and why they are doing, which reemphasizes the fact that why
160 we invited you here, to help us try to make sense of all
161 these provisions and where they work and where there may be
162 questions about perfecting aspects of the law.

163 So let me welcome you all here. The first one we will
164 recognize for 5 minutes, Mr. Mark A Greenwood, who is the
165 principal with Greenwood Environmental Counsel in Washington,
166 D.C. Sir, your full statement is in the record. You are
167 recognized for 5 minutes for an opening statement. We won't
168 be--we will be very patient on the time unless you go
169 extraordinarily long and then we will have--we will start
170 gaveling. So you are recognized for 5 minutes.

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|
171 ^STATEMENTS OF MARK A. GREENWOOD, PRINCIPAL, GREENWOOD
172 ENVIRONMENTAL COUNSEL, PLLC; WILLIAM K. RAWSON, PARTNER AND
173 CHAIR, CHEMICAL REGULATIONS, PRODUCT STRATEGY & DEFENSE
174 PRACTICE, LATHAM & WATKINS, LLP; JENNIFER THOMAS, DIRECTOR,
175 FEDERAL GOVERNMENT AFFAIRS, ALLIANCE OF AUTOMOBILE
176 MANUFACTURERS; JUSTIN JOHNSON, DEPUTY SECRETARY, VERMONT
177 AGENCY FOR NATURAL RESOURCES, ON BEHALF OF THE ENVIRONMENTAL
178 COUNCIL OF THE STATES; LEMUEL M. SROLOVIC, CHIEF,
179 ENVIRONMENTAL PROTECTION BUREAU, NYS OFFICE OF THE ATTORNEY
180 GENERAL; AND LINDA REINSTEIN, PRESIDENT/CEO AND CO-FOUNDER,
181 ASBESTOS DISEASE AWARENESS ORGANIZATION

|
182 ^STATEMENT OF MARK A. GREENWOOD

183 } Mr. {Greenwood.} Chairman Shimkus, Ranking Member
184 Tonko, and members of the committee, thank you for the
185 opportunity to testify here today. My name is Mark
186 Greenwood, I am an environmental lawyer, and I have the
187 dubious pleasure of saying I have worked on TSCA for 25
188 years. Now that is a long time. Some of it was in private

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189 practice where I advised clients on many issues, but it also
190 was during my time at EPA. I was the Associate General
191 Counsel for Pollution Prevention and Toxics, and I was in
192 pesticides. I was also Director of the Office of Pollution
193 Prevention and Toxics as well. This is the part of EPA that
194 actually regulates under TSCA.

195 I am going to be addressing Section 6 in my comments
196 here today. Obviously that is a very important section. It
197 is the section under which the Agency does regulate existing
198 chemicals. But I think as you alluded to, Mr. Chairman, it
199 is also important politically because when people say that
200 TSCA is a broken statute, they tend to refer to Section 6.
201 And so it is all the more important to understand how it has
202 worked and the structure of the law.

203 I am going to talk about three general issues that are
204 within Section 6, the first being the unreasonable risk
205 standard, which is the basic guideline for regulation. Under
206 Section 6C, what that means is EPA has to weigh four factors:
207 the health and environmental risk of substances, the benefits
208 of those substances, the availability of alternatives, which
209 also includes their risks, and the reasonable and

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210 ascertainable economic consequences of the rule. I think it
211 is important to recognize up front that this is not a
212 standard that is unique to TSCA. In fact, if you look across
213 federal law, you will find that a vast majority of the laws
214 that regulate products in commerce include either the
215 unreasonable risk standard per se, or a set of factors that
216 essentially replicate the factors I just mentioned.

217 Certain aspects of this standard are really not that
218 controversial. Everybody, of course, assumes we want to look
219 at environmental risks and health risks. The alternatives
220 are also a very important consideration, because it tends to
221 determine whether any change would be a significant
222 technological change for industry, and the risks associated
223 with those is an extremely important consideration, because
224 if you take an action against one chemical that pushes people
225 into another chemical that is more risky, of course, that was
226 not a good result.

227 There is an area of, I think, controversy which
228 primarily comes up in the area of how to consider the
229 benefits of a product and the cost issues. Now what that
230 very quickly tends to go to is the issue of cost benefit

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231 analysis. TSCA does not require cost benefit analysis, but
232 it is a framework in which that certainly would be allowed.
233 One of the things I think is important for you to consider as
234 you think about how this Act would work is recognize that for
235 over 30 years, the Executive Branch has pursued various
236 executive orders on regulation that require cost benefit
237 analysis. So that is part of the framework in which EPA and
238 other agencies will be working. And so I think for your
239 purposes, it is really important to think about your view of
240 cost benefit analysis when you are trying to decide whether
241 this unreasonable risk standard makes sense.

242 Now the second area I would like to talk about is
243 something called the least burdensome alternative. Basically
244 Section 6 says EPA shall regulate, but it must try to find
245 the least burdensome alternative in its regulatory strategy.
246 Now as a general matter, federal agencies probably think this
247 is fairly reasonable. In my corner, this would be called
248 smarter regulation. You want to try to find a way of
249 achieving your environmental objective, your health objective
250 without having major disruption in the economy and in the
251 society, if you can. That is a worthy goal. It makes sense.

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252 I think most people agree with it.

253 Now, this is the one area that I would focus on where I
254 would say that the decision corrosion-proof fitting, which is
255 the decision related to asbestos, did some damage to what EPA
256 can do, because essentially the corrosion-proof fitting case
257 says that in order to meet this standard of least burdensome
258 alternative, it is up to EPA to look at essentially each
259 alternative that could possibly be less burdensome than the
260 alternative they are considering. Now, that is a much bigger
261 job than EPA and other agencies generally do, and it is
262 broader than the obligations under the executive order. So
263 this is becoming, I think, a very serious issue for
264 consideration. I can absolutely tell you when we first
265 looked at the corrosion-proof fitting decision at EPA, this
266 was the issue that stuck in everybody's mind because it
267 looked to us like it could be a process of what we call
268 paralysis by analysis, which we would have to be looking at
269 many, many options doing many and many cost benefit analyses
270 on each one and there was a deep concern. So again, I think
271 this is one of those key issues that you want to think about
272 and ask the question, here we have a very broad principle of

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273 least burdensome alternative that makes sense to many people.
274 Now the question is in implementation, how can you run
275 something like that so it does not create unreasonable
276 analytical obligations for an agency who needs to act.

277 A third topic I will just mention briefly is the
278 procedures that are in Section 6. Now as you are probably
279 aware, most federal agencies do rulemaking through notice and
280 comment rulemaking. That procedure is required under Section
281 6, but there is an additional set of requirements in Section
282 6 which would call for a legislative hearing, something like
283 an event like this where EPA people ask questions of people
284 who are participating, but also an opportunity for cross
285 examination, which creates a sort of trial type of proceeding
286 inside the rulemaking. Now, there is not a lot of history on
287 this one. It was really only used once, which was in the
288 asbestos rule. I participated in that particular proceeding.
289 I will say that there was probably a bit more heat than light
290 in that proceeding, and I am not sure how valuable it was.
291 But I think this is the kind of issue that you want to think
292 about, whether or not the procedures that are there add value
293 and are warranted.

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294 So with that, I thank you again for having the chance to
295 testify, and I look forward to your questions.

296 [The prepared statement of Mr. Greenwood follows:]

297 ***** INSERT A *****

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|
298 Mr. {Shimkus.} Thank you very much.

299 Now I would like to recognize Mr. William Rawson,
300 Partner and Chair, Chemical Regulations, Product Strategy,
301 and Defense Practice with Latham and Watkins here in
302 Washington, D.C. Sir, you are welcomed. Again, your full
303 statement is in the record. You are recognized for 5
304 minutes.

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|
305 ^STATEMENT OF WILLIAM K. RAWSON

306 } Mr. {Rawson.} Thank you, Chairman Shimkus, Ranking
307 Member Tonko, and distinguished members of the committee.
308 Thank you for inviting me to testify today on the subject of
309 the Toxic Substances Control Act. I have practiced
310 environmental law, particularly in the area of TSCA, for 25
311 years, and have co-authored two TSCA desk books published by
312 the Environmental Law Institute. I am testifying today
313 solely on my own behalf. I do have some preparative remarks,
314 and I will use those to keep me within the time limits.

315 I do understand that the purpose of the hearing today is
316 not to address specific legislative proposals or to advocate
317 any specific changes, but rather to share perspectives on the
318 current statute, particularly Section 6 and Section 18, and I
319 will address in my remarks both sections.

320 Starting with Section 6, it is certainly true that there
321 have been a few rulemaking actions undertaken by EPA under
322 that section, and this has contributed to the erosion of
323 public confidence in the statute and the failed asbestos

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324 rulemaking. I would urge the committee to take a very close
325 look at the corrosion-proof fittings decision, however,
326 because I think it demonstrates that EPA in that rulemaking
327 had committed procedures in such areas that compelled the
328 court to set portions of the rule aside.

329 I will address three requirements in Section 6. The
330 first is least burdensome requirement. As Mr. Greenwood has
331 testified, that is, in fact, the way most agencies try to
332 regulate, to engage in smart regulation, meaning impose the
333 requirement that meets the regulatory objective while
334 imposing the least burden. It is quite similar to the
335 language that we see in Executive Order 13563, which directs
336 agencies to identify and use the best and most innovative and
337 least burdensome tools for achieving regulatory ends. The
338 executive order directs each agency to tailor its regulations
339 to impose the least burden on society consistent with
340 obtaining regulatory objectives. So that part of the statute
341 is good policy consistent with what we see in executive
342 orders issued by this and previous Administrations.

343 Secondly, concerning unreasonable risk, as Mr. Greenwood
344 has described, this also is a standard found common in many

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345 environmental health and safety statutes, and it also
346 parallels language that we find in the executive orders,
347 including the one cited in my testimony. It is very similar
348 to the standard, for example, that EPA uses when regulating
349 non-food use pesticides, and I will read that standard. It
350 requires EPA to consider any unreasonable risk to man or the
351 environment from the pesticide, and to take into account the
352 economic, social, and environmental costs and benefits of the
353 use of any pesticides. So we can see similarities between
354 the standard in TSCA and the standard in other environmental
355 statutes. And Executive Order 13563 similarly directs EPA
356 and other executive agencies to take into account benefits
357 and costs, both quantitative and qualitative, and to propose
358 or adopt a regulation only upon a reasonable determination
359 that its benefits justify its costs.

360 The third aspect of Section 6 I will address briefly is
361 the fact that it places the burden on EPA to demonstrate the
362 need for regulation. This also is not unique. When EPA
363 promulgates a standard, for example, under the Clean Air Act,
364 it typically carries the burden to demonstrate why the
365 particular control or level of protection that is proposed is

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366 necessary to protect human health. EPA does apply very
367 conservative health protection methodologies when making
368 risk-based findings under TSCA or any environmental statute,
369 and courts typically give EPA wide latitude to makes those
370 kinds of judgments.

371 I think it is important to recognize that before the
372 failed asbestos rulemaking, EPA had successfully promulgated
373 several Section 6 rules, albeit on a much smaller scale. No
374 legal challenge. It is important to note in the corrosion-
375 proof fittings case that the court actually started with a
376 presumption of validity of the rule and upheld portions of
377 the rule, and set other portions, major portions aside
378 because of the procedural assumption of errors to which I
379 alluded earlier and that are described in my testimony.

380 It is certainly true that conducting a rulemaking under
381 TSCA or any environmental statute is very challenging, but
382 one of the lessons of corrosion-proof fittings, in my
383 judgment, is that we should not easily or lightly put
384 procedural or substantive requirements aside, as they help
385 ensure the quality or integrity of any rulemaking and any
386 resulting regulatory decision. In my judgment, changes to

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387 Section 6 should not simply make it easier for EPA to ban
388 chemicals, but should support sound regulatory decisions that
389 meet all of the objectives of the statute.

390 I would urge that the number of rulemaking actions taken
391 under TSCA Section 6 is not necessarily the right metric for
392 evaluating the adequacy of the statute, because it doesn't
393 recognize the many times EPA has evaluated chemicals and
394 decided no action is needed because there were no significant
395 risks or the chemical was a low concern for further action.
396 It also doesn't recognize what EPA has accomplished in other
397 parts of the statute, voluntary product stewardship
398 initiatives and the like. All of these are described in
399 EPA's website, and I would direct the committee's attention
400 to that website for more information.

401 The big concern that I would raise with TSCA is that I
402 feel EPA needs a strong mandate to do something about the
403 backlog of chemical--assessments of existing chemicals. A
404 clear mandate and adequate resources are needed, in my
405 judgment, to enable EPA to assess in a timely manner the
406 potential risks to health and the environment from chemicals
407 that are present in commerce in significant quantities, and

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408 that mandate should direct EPA to prioritize so that the
409 highest number of high priority chemicals can be addressed as
410 quickly as possible, or within reasonable timeframes.

411 I will quickly close with one comment on preemption, and
412 that is it has played a very limited role under TSCA to date
413 because it only comes into play when EPA has acted under
414 Sections 4, 5, or 6, and States that typically have not been
415 active with respect to testing TSCA Section 4 or new chemical
416 regulation TSCA Section 6, and relatively few actions have
417 been taken under Section 6, putting aside the regulation of
418 PCBs, so it hasn't been a significant issue yet. But the
419 preemption provision in TSCA is, in fact, similar to
420 preemption provisions in other statutes and it is a well-
421 accepted concept.

422 Thank you very much.

423 [The prepared statement of Mr. Rawson follows:]

424 ***** INSERT B *****

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|
425 Mr. {Shimkus.} Thank you very much.

426 I would like to now recognize Ms. Jennifer Thomas,
427 Director of Federal Government Affairs for the Alliance of
428 Automobile Manufacturers here in Washington, D.C. Same
429 thing, your written statement is in the record and you have 5
430 minutes. Thank you for coming.

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|
431 ^STATEMENT OF JENNIFER THOMAS

432 } Ms. {Thomas.} Thank you, Chairman Shimkus, Ranking
433 Member Tonko, and members of the subcommittee. My name is
434 Jennifer Thomas and I the Director of Federal Government
435 Affairs to the Alliance of Automobile Manufacturers, which is
436 a trade association that represents 12 auto makers that make
437 roughly three out of every four new vehicles sold in the U.S.
438 each year. On behalf of the Alliance, I appreciate the
439 opportunity to offer our views on TSCA and the need for one
440 national program for chemical regulation.

441 Not only are auto makers producing more fuel efficient
442 and safer cars than ever, we have also made tremendous
443 strides in reducing the amount of substances of concern from
444 autos. For example, for more than a decade, auto makers have
445 maintained an industry focus, global substance of concern
446 list, and tracking database to actively reduce their usage in
447 global production. The industry has invested more than \$30
448 million on these systems, which now tracks more than 2,700
449 substances, to ensure that restricted substances are not in

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450 our products. Auto makers have eliminated the use of lead
451 wheel weights, mercury-containing switches, asbestos-lined
452 brake pads, and are currently phasing out the use of deca as
453 a flame retardant, and working to identify an alternative
454 brake friction material to replace copper. But we recognize
455 that there is more work to do.

456 TSCA remains the only federal environmental statute that
457 has not been substantively revised. We support modernizing
458 TSCA in part because inaction at the federal level is
459 creating an environment in which States feel compelled to go
460 out on their own to regulate chemicals, creating a patchwork
461 of State standards. As you might suspect, such a patchwork
462 presents great obstacles to effective chemical management for
463 large industry sectors, in particular, manufacturers of
464 complex durable goods, such as autos. The Alliance strongly
465 believes that modernizing TSCA to avoid a balkanized approach
466 to chemical management is more in line with today's
467 manufacturing moralities.

468 The average auto has 30,000 unique components, and each
469 individual component is comprised of multiple chemicals and
470 mixtures. Many components are obtained from our suppliers as

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471 finished products, which are then integrated into the
472 vehicle. Auto makers recent steps to streamline production
473 and reduce costs through common design and platform sharing
474 resulted in better products for our customers and allowed us
475 to stay competitive in this global market. An overwhelming
476 array of State chemical regulations, rather than one federal
477 chemical management program, increases costs, hinders
478 flexibility, and reduces competitiveness. Multiple State
479 programs also have the potential to conflict with stringent
480 fuel economy and safety standards. To meet the aggressive
481 54.5 miles per gallon fuel economy standards by model year
482 2025, auto makers will be relying on lightweight materials
483 like plastics that contain multiple chemical components.
484 Auto makers spend billions of dollars annually on R&D to
485 advance fuel efficiency, innovate new safety technologies,
486 and develop more sustainable materials before the need of any
487 regulation. A myriad of State programs has the potential to
488 derail this progress by shifting the industry’s focus from
489 R&D to regulatory compliance. We readily acknowledge that
490 States have a very important role to play, and the Alliance
491 supports a process by which States can address their specific

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492 chemical concerns with EPA in a common scientifically-based
493 framework under TSCA. Legislative efforts to modernize TSCA
494 should seek collaborations with States to achieve product
495 safety, yet continue to maintain strong federal preemption
496 provisions. A unified national program would provide much-
497 needed regulatory certainty while ensuring that products and
498 chemicals are uniformly safe across all 50 States.

499 Moving forward, it is critical that any legislative
500 efforts to modernize TSCA consider the unique concerns of
501 complex durable goods manufacturers. Currently, article
502 exemptions are in place for most TSCA requirements. However,
503 we are noticing a significant trend at the State level
504 targeting not just chemicals, but consumer products or
505 articles. The Alliance urges the committee to consider
506 establishing clear standards for the regulation of articles
507 under TSCA and support the continued use of existing article
508 exemptions in most circumstances.

509 Finally, legislation modernizing TSCA should allow
510 sufficient lead time to investigate and qualify viable
511 alternatives, maintain a de minimus threshold of .1 percent
512 for chemical control actions, and provide an exemption for

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513 service--for automotive service parts. Such an exemption
514 would avoid any disruption in the supply of thousands--
515 hundreds of thousands of replacement parts and allow auto
516 makers to continue to fulfill customer warranties and replace
517 existing fleet.

518 The Alliance appreciates the opportunity to offer our
519 views on TSCA and the need for one national program for
520 chemical regulation. We stand ready to work with this
521 committee on any efforts to modernize this important policy.
522 Thank you again, and I look forward to any questions you
523 might have.

524 [The prepared statement of Ms. Thomas follows:]

525 ***** INSERT C *****

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|

526 Mr. {Shimkus.} Thank you.

527 Chair now recognizes Mr. Justin Johnson, Deputy

528 Secretary for the Vermont Agency for Natural Resources from

529 the great State of Vermont. Sir, you are welcome and you are

530 recognized for 5 minutes.

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|
531 ^STATEMENT OF JUSTIN JOHNSON

532 } Mr. {Johnson.} Thank you, Chairman Shimkus and Ranking
533 Member Tonko, and the other members of the committee. It is
534 a real honor to come down and speak to you about this today.
535 I am the Deputy Secretary of the Agency of Natural Resources
536 in Vermont, but today I am representing the Environmental
537 Council of the States, which is made up of the leaders of the
538 state and territorial Environmental Protection Agencies.

539 Just yesterday, ECOS passed a resolution on this matter
540 at our annual meeting over in Arlington, and I will be
541 summarizing that position today.

542 First of all, I would say that ECOS members are very
543 keen to see reform of TSCA. It is very important to us for a
544 number of reasons, which I will spell out. In particular, we
545 have four top issues of concern: preemption, chemical
546 assessments, the safety standard, and CBI, which I know is
547 not the specific topic today and you have addressed before,
548 but that is also an important one.

549 Preemption is the number one topic, simply because

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550 States do not want to lose the ability to act to restrict a
551 chemical in order to prevent harm to the public or the
552 environment. This ability to act is important to States as a
553 backstop to either a federal program that does not work as
554 intended, or a federal program that acts slowly or fails to
555 act when reliable scientific data indicates that action is
556 needed. Without this ability to act, the only recourse would
557 be to come back to Congress to do what we are doing, and it
558 is a very high bar indeed. Retaining our ability to act does
559 not mean that 50 States with 50 different chemical laws is
560 the outcome. States are only looking to have the ability to
561 act on chemicals in a way that their legislatures, governors,
562 and people deem appropriate. It is expensive and time
563 consuming to take these actions, and the way States are these
564 days, we are not looking for more work, but we will act if we
565 need to to protect citizens.

566 States have lost confidence that TSCA works as
567 thoroughly or as quickly as it ought to, leaving States to
568 pass their own laws and rules on chemical management.
569 However, if TSCA did work thoroughly and quickly, there would
570 be much less incentive for States to act with additional

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571 requirements. State authority would be preserved, but seldom
572 invoked. As a practical matter, implementation of a
573 comprehensively reformed TSCA will render the State
574 implementation issue largely moot, as States will focus their
575 increasingly limited resources on other priorities.

576 During the last 20 years, however, States have acted to
577 fill the regulatory void of the federal level, illustrating
578 the vitally important role States play in providing a
579 backstop to federal inaction. With regard to the current
580 impact of TSCA Sections 6 and 18 on the exercise of States
581 action or on common law authority, we suggest that because
582 EPA has acted on so few chemicals under TSCA, preemption of
583 State authority has not been an issue to date.

584 States believe that for TSCA to work well, there are at
585 least three other key requirements. Chemical assessments
586 need to be conducted. There are thousands of chemicals that
587 the EPA hasn't acted on. Currently, EPA must conduct reviews
588 of new chemicals to determine if they are a threat. Because
589 of the current TSCA requirements for EPA to generate most of
590 the data itself, this burden is beyond the Agency's
591 capability and so very few get reviewed. Most chemicals

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592 simply pass into commerce. When this happens, States may see
593 a problem with some of these and then act. The key, then, is
594 for EPA to prioritize and review high priority chemicals,
595 then it can focus on the chemicals of greatest concern. But
596 EPA doesn't currently have the resources to conduct this
597 process, so industry should supply some or all of the needed
598 data. This is why ECOS says that TSCA reform should ensure
599 that the burden is effectively placed on manufacturers.

600 The safety standard burden of proof should be less
601 onerous. Currently, States think that the action standard
602 the EPA is held to is too high in their ability to restrict a
603 chemical's use. Currently, TSCA's safety standard requires
604 EPA to prove that harm from a chemical has occurred before it
605 can restrict use of the chemical. This is almost an
606 impossible standard for EPA to meet. In our resolution, we
607 ask that TSCA be reformed so that EPA can take expedited
608 action when a chemical presents a very serious or immediate
609 risk to public health or the environment, including the
610 ability to impose interim conditions to be in effect until
611 EPA has had the opportunity to make a safety determination.
612 This will help alleviate State concerns about the

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613 effectiveness of TSCA.

614 Finally, I will just say on confidential business
615 information, States need access to confidential data to help
616 us fulfill our requirements to protect citizens and the
617 environment. We understand that States should have to follow
618 federal guidelines that restrict distribution of these
619 materials, but we believe that that is an important step in
620 making TSCA more open and available to people so they can
621 understand the decisions that are being made. There are
622 other issues, but during our resolution and with the
623 permission of the committee, I would provide a copy of that
624 final resolution as an addendum to my written testimony.

625 Thank you, and I look forward to your questions.

626 [The prepared statement of Mr. Johnson follows:]

627 ***** INSERT D *****

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|
628 Mr. {Shimkus.} Thank you, sir.

629 Now chair turns to--and I hope I don't butcher it--

630 Lemuel Srolovic. Close? All right. That is the last time I

631 am going to try. Chief of the Environmental Protection

632 Bureau of New York State Office of the Attorney General.

633 Sir, you are welcomed. Your full statement is in the record

634 and you are recognized for 5 minutes. Just hold on for one

635 second. Let's see if we can get--there should be a light

636 that goes on if you press it. If not, just grab one of your

637 other panelists--

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|
638 ^STATEMENT OF LEMUEL M. SROLOVIC

639 } Mr. {Srolovic.} A little help from the sister state
640 here. Thank you.

641 Chairman Shimkus, Ranking Member Tonko, and
642 distinguished committee members, thank you for the
643 opportunity to testify this afternoon on behalf of Eric T.
644 Schneiderman, Attorney General of New York.

645 For many decades, New York has been a leader in
646 protecting public health and the environment from toxic
647 chemicals. That exercise of traditional state power has
648 allowed New York to protect its citizens and natural
649 resources, and to serve as a laboratory for nationwide
650 solutions to threats posed by toxic chemicals.

651 For example, in 1970, the State of New York banned the
652 use of the insecticide DDT, which was devastating many bird
653 populations, including the American bald eagle. EPA followed
654 New York's lead in banning DDT. Now when you travel from New
655 York City to Albany along the Hudson River, you can routinely
656 see bald eagles along the way and it is a highlight of that

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657 trip.

658 New York has taken other actions to protect public
659 health and the environment by restricting the sale and use of
660 products containing harmful chemicals. Some of those actions
661 include to protect babies and young children, New York has
662 banned bisphenol A, or BPA, in pacifiers and baby bottles for
663 use in children under 3 years of age. BPA has been shown to
664 mimic the behavior of estrogens, potentially causing changes
665 in the onset of puberty and reproductive functioning. New
666 York also restricts the concentration of lead, cadmium,
667 mercury, and chromium in product packaging. Lead and mercury
668 are probable human carcinogens, while cadmium and chromium
669 are known human carcinogens. To protect New Yorkers that
670 rely on groundwater for their drinking water supply, New York
671 prohibits the sale or distribution of gasoline within the
672 State containing methyl tertiary butyl ether, or MTBE. MTBE
673 has been shown to have adverse health effects, and when in
674 drinking water, may impart bad taste and odor.

675 The goal of TSCA is to establish necessary and
676 appropriate federal restrictions on the manufacture and use
677 of chemicals that present an unreasonable risk of injury to

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678 the health of Americans or the environment. Attorney General
679 Schneiderman strongly supports this goal, and recognizes the
680 critical contribution that TSCA, in partnership with State
681 efforts, could make in ensuring the adequate protection of
682 public health and the environment.

683 Unfortunately in practice, TSCA has largely failed to
684 live up to its goal because only a small number of chemicals
685 have been tested, and just a handful have been restricted.

686 It is essential that TSCA be reformed to require EPA to
687 increase its knowledge of the toxicity of the potentially
688 dangerous chemicals on its inventory as quickly as possible,
689 and to impose appropriate restrictions on their manufacture
690 and use as necessary to adequately protect public health and
691 the environment.

692 Over on the Senate side, a pending bill, S.1009 proposes
693 to reform TSCA in important respects. Attorney General
694 Schneiderman believes that a number of these amendments
695 represent critical improvements to TSCA; however, the
696 Attorney General also believes that that legislation could be
697 further improved.

698 Protecting the Nation's public health and the

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699 environment is best achieved through a dynamic federal state
700 relationship in which the authority of States to enact
701 enforced protections, which are at least as stringent as
702 federal protections, but may also be more stringent, is
703 preserved. That relationship animates our national laws
704 regarding air and water pollution, hazardous waste,
705 pesticides, as well as TSCA. TSCA's preemption provision
706 preserves the States' traditional authority to restrict
707 chemicals that States have found dangerous, as well as
708 allowing States to continue to serve as laboratories for
709 nationwide solutions.

710 In considering necessary reform of TSCA's regulatory
711 provisions, the traditional authority of States to take
712 action to protect their citizens and the environment from
713 threats posed by toxic chemicals should be preserved.

714 In conclusion, achieving TSCA's goal of ensuring the
715 adequate protection of public health and the environment from
716 toxic chemicals is critically important, as is preserving the
717 authority of States to protect public health and the
718 environment. Because TSCA has not met its goal, Attorney
719 General Schneiderman strongly supports your efforts and

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720 offers the full assistance of our office to you and your
721 colleagues as you review this important federal law.

722 Thank you, and I look forward to any questions.

723 [The prepared statement of Mr. Srolovic follows:]

724 ***** INSERT E *****

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|
725 Mr. {Shimkus.} Thank you, sir, and now the chair
726 recognizes Ms. Linda Reinstein, correct, President, CEO and
727 Cc-Founder of Asbestos Disease Awareness Organization from
728 California. You are welcomed and you are recognized for 5
729 minutes.

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|
730 ^STATEMENT OF LINDA REINSTEIN

731 } Ms. {Reinstein.} Thank you for giving me the honor and
732 the opportunity to testify today at your critically important
733 hearing.

734 I know far too well that toxic chemicals are not just
735 threats. They are a real part of life and death for many
736 Americans. During the past 10 years since I have been coming
737 to Washington, more than 100,000 Americans have lost their
738 lives because of asbestos. I want to make it clear, I am
739 neither a lobbyist nor an attorney. I am a mesothelioma
740 widow.

741 I co-founded the Asbestos Disease Awareness Organization
742 back in 2004. We have become the largest independent non-
743 profit organization in the United States dedicated to
744 eliminating asbestos-caused diseases.

745 It is important for me today. I want to dedicate my
746 testimony to Janelle and to Michael. Tragically, Janelle
747 lost her life to mesothelioma just a few months ago. She was
748 only 37 years old. She has left behind her husband and an

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749 11-year-old son. Michael, age 29, a mesothelioma patient, is
750 fighting for his life and he faces limited treatment options.

751 My husband, Alan, was diagnosed with pleural
752 mesothelioma in 2003. We had never heard of this asbestos-
753 caused cancer, and we shortly learned it was incurable. Alan
754 chose to undergo radical surgery. They removed a left rib,
755 his left lung, resected his pericardium, and surgically
756 replaced his diaphragm. When mesothelioma attacked his
757 remaining lung, he was then tethered to oxygen and he felt
758 like he was breathing through a pinched straw each breath,
759 every second, every minute, every day. In 2006, my then 13-
760 year-old daughter and I were by his side as he took his last
761 breaths and died.

762 Sadly, our stories are far too common. Asbestos is a
763 known human carcinogen, and it remains legal and lethal in
764 the United States. The Toxic Substances Control Act, TSCA,
765 has failed to protect public health and our environment. In
766 1989, EPA issued a final rule under Section 6 of TSCA banning
767 asbestos-containing products. In 1991, however, this rule
768 was overturned by the 5th Circuit Court of Appeals. As a
769 result, there was no ban on the manufacture, importation,

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770 processing, or distribution in commerce of asbestos-
771 containing products.

772 Asbestos has been banned in 54 countries without an
773 economic consequence. It is time for TSCA reform, and more
774 importantly, the burden of proof should shift to the chemical
775 manufacturers to prove their chemicals are safe.

776 I want you to know that consumer, environmental, and
777 occupational exposures continue. From 1900 to 2010, we have
778 used more than 31 million tons of asbestos, and since 1965,
779 nearly 1.4 million tons of asbestos have been used in
780 friction products: brakes, clutches, and others. But I ask
781 you today, each of you, do you know where asbestos is in your
782 home, in your district, or inside the Capitol?

783 Your constituents can't manage the toxic risks on their
784 own. It was reported that 2,600 tons of asbestos debris were
785 removed after the Joplin, Missouri tornado, and I want you to
786 know that there are tons of toxic debris that littered the
787 coastline after Hurricane Sandy. It was California's Prop
788 65, not the EPA, that removed a child's toy from the consumer
789 shelves that was contaminated with asbestos. Horrifically,
790 last year we imported 1,060 tons of asbestos to meet so-

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791 called manufacturing needs.

792 Now I want to be clear about this also. I have tried
793 for 2 years through FOIA requests to identify who is
794 importing asbestos, what is being manufactured, and where is
795 the end product being used? My questions have all gone
796 unanswered. Due to trade laws such as U.S. Code Title 13,
797 Chapter 9, Section 301(g), the information is all
798 confidential. Yet asbestos has caused the largest manmade
799 disaster. The CDC NIOSH statistics from 2000 to 2010
800 revealed 43,464 Americans have died from mesothelioma and
801 asbestosis, and those are just two of the asbestos-caused
802 diseases.

803 So when we think about cost benefit analysis and some of
804 the other hoops that we have to jump, I want you to think
805 about the lives that are claimed as you draft and pass
806 meaningful TSCA reform. For Alan, Janelle, Michael, and the
807 hundreds of thousands of other asbestos victims and their
808 families, we deserve responsibility, accountability, and
809 transparency, and without these three, no one is safe. No
810 one.

811 The asbestos facts are irrefutable. Every day, 30

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812 Americans die from preventable diseases. We cannot alter
813 history or bring back the dead; we can only learn and work to
814 learn to save the future lives. It is time for Congress to
815 protect public health and pass meaningful TSCA reform
816 legislation which truly empowers the EPA to finally ban
817 asbestos.

818 As I have been saying for 10 years, one life lost to a
819 preventable asbestos-caused disease is tragic. Hundreds of
820 thousands of lives lost is unconscionable. Prevention
821 remains the only cure. I have attached to my testimony a
822 petition signed by 2,700 people who support a ban of
823 asbestos, and I welcome your questions. Thank you.

824 [The prepared statement of Ms. Reinstein follows:]

825 ***** INSERT F *****

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|
826 Mr. {Shimkus.} Thank you. We appreciate your
827 testimony.

828 Now I would like to recognize myself for 5 minutes for
829 the first round of questions. My first question goes to Mr.
830 Greenwood.

831 You mentioned this in your opening statement, but for
832 clarification, TSCA Section 6 provides EPA broad authority to
833 regulate chemicals if EPA reasonably believes a chemical
834 ``presents or will present an unreasonable risk of injury to
835 health or the environment.'' EPA imposed controls range from
836 chemical bans to restricted uses to warning label
837 requirements. What does unreasonable risk mean in the TSCA
838 context?

839 Mr. {Greenwood.} Mr. Chairman, as I indicated a little
840 bit in my initial statement, it involves a balancing of
841 multiple factors. I mean, you have to look at the risks.
842 You have to look at product benefits. You look at
843 alternatives, and then, of course, you look at costs. So I
844 think the key thing there is it is a combination of those
845 factors and an analysis. It does not necessarily require,

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846 for example, cost benefit analysis, but that is often done.

847 It is useful to perhaps recognize since asbestos is such
848 a topic here that a cost benefit analysis was done on
849 asbestos under the executive order, not under TSCA, and the
850 Administration determined that despite the significant risks,
851 that rule was worth sending out. So the point is I think
852 what you look at here is both of the factors that were
853 considered, but they still led to decision to try to ban
854 asbestos. So that doesn't necessarily, as unreasonable risk,
855 mean you are doing less for more regulation.

856 Mr. {Shimkus.} And you reiterated what you said in your
857 opening statement. You have health and environmental risks,
858 I think benefits, availability of alternatives, and economic
859 consequences of the rule. That was the kind of four criteria
860 that we use to evaluate that. And you believe this is a
861 workable standard for TSCA?

862 Mr. {Greenwood.} I think it is and can be. I mean, I
863 think--again, as I mentioned and I think Mr. Rawson
864 mentioned, too, you got to remember that the unreasonable
865 risk standards is out there and in many ways the prevailing
866 standard that exists for regulation of products. And so you

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867 see experiences in other parts of the government, including
868 pesticides at EPA, where there has been a very active program
869 with an unreasonable risk standard. So I think the issues
870 that you see in TSCA, at least with Section 6, as I mentioned
871 in my testimony have less to do with the unreasonable risk
872 standard than they do with that interpretation of what least
873 burdensome alternative is.

874 Mr. {Shimkus.} And Mr. Rawson, Mr. Greenwood referred
875 to you. Do you agree with that, those statements?

876 Mr. {Rawson.} I do. I think because you see the same
877 standard in other statutes, including statutes administered
878 by other agencies such as the Consumer Products Safety Act
879 administered by the CPSC, and we see the basic criteria that
880 make up the unreasonable risk standard in the executive order
881 issued by this Administration and similar executive orders
882 issued by prior Administrations. So I do think it is the
883 right target to aim for.

884 Mr. {Shimkus.} Having said that, do you think that the
885 preemption provision similarly needs to be strengthened?

886 Mr. {Rawson.} Well, the preemption provision in TSCA
887 acts similar to the preemption provisions in the Consumer

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888 Products Safety Act and some other statutes. It basically
889 says if EPA hasn't acted, States are free to act. Where EPA
890 has acted under particular sections, then States typically
891 can't act, although there are some exceptions. States can
892 adopt identical laws to make them enforceable under State
893 law. The States can actually prevent the use of the chemical
894 within their boundaries, other than for the use to make other
895 chemicals or mixtures. So there is still some latitude for
896 the States.

897 In terms of strengthening it, the one thing that the
898 current preemption clause doesn't do, it preempts State
899 action when EPA acts to regulate. If EPA takes a hard look
900 at a chemical and says this one is okay, this activity is
901 safe, there is no risk, it doesn't preempt us in the absence
902 of regulation. It doesn't prevent States from saying well,
903 we are going to regulate it. So one thing that could be
904 considered is when EPA takes a hard look, all the interested
905 stakeholders have an opportunity to comment and have their
906 say and no risk is found, you could argue that preemption
907 could make sense there to have national uniformity. That is
908 not the current approach.

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909 Mr. {Shimkus.} Thank you. Ms. Thomas, some people
910 think TSCA Section 6 should not include any exposure of
911 magnitude effect considerations. What else--what other
912 considerations should be evaluated?

913 Ms. {Thomas.} Thank you for the question. While I am
914 not a TSCA expert by any means, we would support that a
915 process where active chemicals in commerce are evaluated, are
916 prioritized, and assessed in a science-based, risk-based
917 manner that takes into full account things like chemical use,
918 hazard information, potential exposure, and the availability
919 of alternatives. And we would be more than happy to work
920 with you to try to find that right balance so that all of
921 those things are accomplished.

922 Mr. {Shimkus.} So if I can restate what you--you think
923 that there is--a robust science assessment would be helpful
924 in this process?

925 Ms. {Thomas.} Absolutely, yes.

926 Mr. {Shimkus.} Great. I thank you for your answers.

927 I would now like to yield to Mr. Tonko, the Ranking
928 Member, for 5 minutes.

929 Mr. {Tonko.} Thank you, Mr. Chair. I thank the

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930 witnesses again for their testimony, and particularly welcome
931 Mr. Johnson and Mr. Srolovic from my home State who can
932 provide an important State perspective.

933 In recent years, it appears as though States have led
934 the way on chemical regulation, as EPA's program has
935 faltered. It is vitally important that we hear from them
936 today. Any effort to reform TSCA should protect the hard
937 work States have devoted to protecting their citizens from
938 the risks of dangerous chemicals, and learn from those
939 success stories.

940 Mr. Srolovic, can you describe briefly some of the
941 chemical risks New York has been working to address?

942 Mr. {Srolovic.} Yes, Ranking Member Tonko. Thank you.

943 In New York, the most recent example I alluded to in my
944 testimony was the risk to groundwater and public health posed
945 by MTBE. That assessment led to the ban that was
946 successfully defended from a challenge. I think overall,
947 what we found, our kind of lesson learned is that
948 environmental laws work best when there is a strong State and
949 federal partnership, and the problem with chemical regulation
950 is that we don't have an effective federal partner. And

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951 while New York continues to use its traditional authority to
952 protect public health and the environment, we can't do it
953 alone. We need EPA to have a clear mandate and the authority
954 and the resources to timely assess the myriad of chemicals in
955 our society for risks to health and the environment, and to
956 enact appropriate restrictions.

957 Mr. {Tonko.} Thank you. EPA's attempts to regulate
958 asbestos have utterly failed in light of industry-backed
959 litigation. Have the New York State regulations faced legal
960 challenges, or Vermont, if you can share your story, either
961 of you?

962 Mr. {Johnson.} So Vermont has not had a successful
963 challenge. We also banned MTBE in gasoline. The challenge
964 for Vermont with its 620,000 residents and one toxicologist
965 is that we just--we have looked at some chemicals, we have a
966 lot of concerns, but we don't have an ability. We just
967 haven't had an ability to do the work that we think
968 ultimately ought to be done at the federal level. We are
969 absolutely in agreement in Vermont that a nationwide process
970 would be the most appropriate one. It would work best for
971 everybody if it was comprehensive and robust, but we will

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972 certainly be looking--you know, if this latest approach
973 attempt to sort of reform TSCA doesn't come to fruition, I
974 think the pressure will be on in my legislature to do more in
975 Vermont. I think it will take a lot of work, but we could be
976 successful.

977 Mr. {Srolovic.} The New York ban on MTBE, as I
978 mentioned, was challenged by industry. My office
979 successfully defended that through trial. The district court
980 found that the exercise of New York's traditional power to
981 protect its groundwater and its public health were not in
982 conflict with the approval or authorization of MTBE as a
983 gasoline additive by EPA under the federal Clean Air Act. So
984 in that case, the court found, in fact, that there was no
985 conflict between the State and federal regimes, and that
986 basic decision was just recently revisited by the U.S. Court
987 of Appeals for the Second Circuit in a case involving New
988 York City groundwater contamination, and again found that
989 there was no conflict between these two programs.

990 Mr. {Tonko.} Thank you. It is interesting to note that
991 after New York acted to address the risks of the pesticide
992 DDT, EPA followed suit. Mr. Srolovic, one of things this

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993 subcommittee should understand is what tools States need in a
994 situation where federal and State requirements are the same.
995 If EPA adopts chemical regulations that mirror rules
996 currently in place in New York, does New York still need
997 authority to enforce the existing New York State
998 requirements, or is it sufficient for the State to rely on
999 federal enforcement or the availability of citizen suits
1000 under TSCA?

1001 Mr. {Srolovic.} It is important for States to retain
1002 the ability to adopt under their own State laws the same
1003 requirements as the federal requirements. And the reason for
1004 that primarily is that it then allows the State environmental
1005 agencies--in New York, it is the Department of Environmental
1006 Conservation--but the environmental regulatory agencies
1007 around the State do the bulk of day-to-day enforcement of our
1008 environmental laws, whether it is a State standard or a
1009 federal standard. And having the ability which is presently
1010 preserved under TSCA for States to adopt that same
1011 requirement under their own law is very important for
1012 enforcement around the country.

1013 Mr. {Tonko.} I see that I have exhausted my time, so I

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1014 yield back. Thank you, Mr. Chair.

1015 Mr. {Shimkus.} Gentleman yields back his time. The
1016 chair now recognizes the gentleman from Pennsylvania, Mr.
1017 Murphy, for 5 minutes.

1018 Mr. {Murphy.} Thank you, Mr. Chairman, and I thank the
1019 distinguished panel for being with us today.

1020 Mr. Greenwood, I am just trying to get a sense from your
1021 testimony, a couple clarifications. Which is more important
1022 to help us get to the truth on chemical safety questions,
1023 peer review of data and scientific analysis, or cross
1024 examination requirements under TSCA's Section 6C?

1025 Mr. {Greenwood.} Well, I guess I would opt for peer
1026 review. Let me amplify that a bit. I do think, particularly
1027 in the context of TSCA Section 6, by the time you get to this
1028 cross examination stage, there has been a fairly extensive
1029 airing of the issues, and at the point--at least with my
1030 experience with asbestos, by the point you were talking about
1031 cross examination, there was essentially everybody hunkered
1032 down in their own positions taking shots at each other. To
1033 me, a better approach is what we see often with peer review,
1034 which is more typical of what we see today in regulation,

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1035 where experts come together, see if they can develop
1036 consensus, see if they can provide some useful advice to an
1037 agency. And my general sense is that is probably more
1038 valuable.

1039 Let's say that peer review is not necessary every time,
1040 because depending on the issue and the rulemaking, you may
1041 not need that, but my general experience is that has been
1042 more successful.

1043 Mr. {Murphy.} Let me ask also then about cost benefit
1044 analysis. Does that also proceed in any kind of a scientific
1045 version, and what kind of data is included in a cost benefit
1046 analysis?

1047 Mr. {Greenwood.} Well, the range of data could be quite
1048 extensive. Obviously you are looking at the most best
1049 available information you can find. For the cost side, it is
1050 often a little easier. The real challenge is usually how you
1051 articulate benefits, because the key aspect of cost benefit
1052 analysis is you try to monetize if you can and compare, as
1053 apples to apples, costs and benefits. And some of that is
1054 much easier to do for some benefits than others, and that
1055 becomes one of the difficult challenges, but it can work

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1056 well.

1057 Mr. {Murphy.} Thank you. Is the requirement that EPA
1058 consider the availability of viable substitutes for chemicals
1059 for specific uses appropriate?

1060 Mr. {Greenwood.} I think it absolutely is. It is
1061 critical, I would say, for at least two good reasons. One is
1062 it is critical in making a clear signal about whether there
1063 is going to be a technological issue. In other words, if you
1064 find that there are no alternatives, then you know you are
1065 entering a world in which you could have significant
1066 disruption, and that is an important thing to understand.

1067 The other thing about alternatives is it helps set up
1068 this question of shouldn't there be some assessment of those
1069 alternatives to see if they are better or worse, because the
1070 worst thing you want to do is push one chemical out of the
1071 economy and substitute another one that has got a bigger
1072 hazard.

1073 Mr. {Murphy.} Let me ask another question about this
1074 scientific quality of these decisions with regard to when
1075 they try to make a good risk decision, how does a focus on
1076 conditions of use of a chemical affect that scientific

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1077 quality?

1078 Mr. {Greenwood.} That is a very important question, and
1079 I think it comes up more and more, because the question is as
1080 you have a general concern about a chemical, you need to
1081 translate that into something that you can actually do. And
1082 part of that is to look, then, at uses of chemicals. Once
1083 you know what the uses are, you can then do better exposure
1084 assessments, because you have very tangible situations to
1085 look at. It is also, again, critical for this issue of
1086 alternatives. Once you know exactly what your use is and
1087 your technology, then you can begin to ask the question what
1088 really are the realistic alternatives for that particular
1089 function, that use, and that exposure?

1090 Mr. {Murphy.} Thank you.

1091 Mr. Rawson, a quick question here. In your experience,
1092 we know that in the 37-year history of TSCA, EPA has only
1093 successfully imposed restrictions on, I think, five chemicals
1094 using Section 6. Does this mean that TSCA provides EPA
1095 inadequate authority to regulate, or there are some other
1096 issues there?

1097 Mr. {Rawson.} Thank you. Well, it certainly reflects

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1098 the track record, but my own personal view is it reflects
1099 more EPA's reaction to the corrosion-proof fittings decision
1100 than problems with the statute itself. We have walked
1101 through the core elements of Section 6 and shown how they are
1102 actually in line with the standard practice for most agencies
1103 trying to address unreasonable risk and where possible, use
1104 the least burdensome approach to address the problem. But of
1105 course, the approach has to address the problem. So that is
1106 fairly standard and what is in the statute is consistent with
1107 smart regulation.

1108 The problem with corrosion-proof fittings is that there
1109 are some really serious issues with the rulemaking. I don't
1110 want to drag through those, but the Agency alters exposure
1111 assessment in very significant ways after the hearings were
1112 closed, and so nobody had a chance to comment. It was
1113 presented with really credible evidence that substitutes
1114 would actually cause more deaths than would be prevented by
1115 the rule. So these were big issues. We were all familiar
1116 with the adage that bad law makes--excuse me, bad facts make
1117 bad law. In this case, I think we had a situation where bad
1118 facts made for a very strong decision, and the Agency took

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1119 that as saying that somehow now Section 6, because of this
1120 judicial gloss, is harder than what most agencies have to do.
1121 My feeling is that there are all too many statements in that
1122 decision that say if you had done it better, if you hadn't
1123 made these egregious errors, the court would have been much
1124 more deferential. So I sort of feel like too much of a hard
1125 lesson was learned from that decision.

1126 Mr. {Shimkus.} Gentleman's time is expired. Chair now
1127 recognizes gentleman from California, Mr. McNerney, for 5
1128 minutes.

1129 Mr. {McNerney.} Thank you, Mr. Chairman. I thank the
1130 witnesses for coming today.

1131 I would like to start with Mr. Greenwood. What would
1132 you--or how would you formulate an alternative to a least
1133 burdensome alternative? How would you formulate something
1134 better than that?

1135 Mr. {Greenwood.} Well, one of the things I think is
1136 worth looking at is the way the current executive order
1137 frames the issue. It basically says that you are supposed to
1138 be looking at alternatives that are potentially effective and
1139 reasonably feasible. There is kind of an implied rule of

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1140 reason there. The agent has to look at large, broad options.

1141 He doesn't have to look at every possible version, every

1142 possible variation, and I think--

1143 Mr. {McNerney.} So that has to be done in language,

1144 right, that can be followed?

1145 Mr. {Greenwood.} Yes.

1146 Mr. {McNerney.} That is a bit of a challenge. Do you

1147 have a specific wording or specific language that you would

1148 want to use?

1149 Mr. {Greenwood.} Well again, I think if you use that

1150 language and then kind of focus on the way it has been

1151 implemented in executive orders, I think you find a system

1152 that works, because--just to give you a ballpark, it is very

1153 common for agencies to, let's say, look at three or four

1154 large options, which is within the scope of their capability.

1155 They can analyze them, they can present the information. It

1156 goes to public comment. It is work. It takes a little bit

1157 of effort. It takes a bit of time, but it is not an

1158 impractical approach.

1159 Mr. {McNerney.} Mr. Rawson, I believe you said that

1160 Section 6 places the burden on the EPA to demonstrate the

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1161 need for regulation. What would you think would be a better
1162 approach than having the burden on the EPA?

1163 Mr. {Rawson.} So I actually think that is fine. I
1164 think it is fairly typical that the burden is on the Agency
1165 to justify its action. But I think the burden should often
1166 be on industry to supply much of the information, the test
1167 data, to provide information on exposure and other
1168 information that would support that decision. So my view of
1169 the world is that industry should supply much of the
1170 information, the Agency should make the decision about risk,
1171 and then if it finds a significant risk, propose the least
1172 burdensome approach that would address that risk.

1173 Mr. {McNerney.} Well the opposite would be to require
1174 industry to prove that their chemicals are safe.

1175 Mr. {Rawson.} Right. That is effectively what is
1176 happening right now with new chemical regulation, because
1177 with new chemicals companies have to--and this was covered by
1178 the previous hearing, of course, they have to provide a pre-
1179 manufacture notice. Typically, EPA either gets the
1180 information it wants or the restrictions it wants, or the PMN
1181 is withdrawn. But with the universe of existing chemicals

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1182 and all the myriad uses and so on, it is just not practical
1183 at this point in time to have industry prove a negative for
1184 every chemical for every use. What we really need, in my
1185 judgment, is EPA to have a mandate and the resources to
1186 prioritize and address in a reasonable timeframe the high
1187 priority chemicals, hopefully identify that most uses of most
1188 chemicals don't pose unreasonable risks, and then focus on
1189 the ones that might.

1190 Mr. {McNerney.} Well, the European countries, at least
1191 some of them, appear to have the mandate that you are talking
1192 about.

1193 Mr. {Rawson.} What they have is a mandate under their
1194 current program, known as REACH, a requirement that industry
1195 assemble chemical safety reports, dossiers, on their
1196 chemicals. But in only very limited circumstances will there
1197 be a requirement to seek authorization to continue uses. It
1198 is a very narrow subset of chemicals for which that approach
1199 would be taken.

1200 Mr. {McNerney.} Well, I believe that you implied in
1201 your opening remarks that the EPA asbestos rule--overturning
1202 of the EPA asbestos rule had a chilling effect on that

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1203 Agency's ability to conduct further rulemaking. Is that--did
1204 I hear you right about that?

1205 Mr. {Rawson.} Yes, and Mr. Greenwood was there at the
1206 time. He was head of OPPT, and he has described that in his
1207 testimony. So certainly the Agency read that opinion and
1208 thought wow, this is hard. Maybe we shouldn't try to do
1209 this. Maybe we should act in other ways. I wasn't there.
1210 When I read the opinion, I am more struck by the errors,
1211 procedural and substantive errors that really forced the
1212 court's hand. And I would urge, there are some statements.
1213 I will just read one statement. This is in the conclusion
1214 where the court sort of tries to say to the Agency look, you
1215 can do this again, just follow some of the things I have
1216 said. And the court said EPA does not have the duty under
1217 TSCA of affirmatively seeking out and testing all possible
1218 substitutes. But when an interested party comes forward with
1219 credible evidence that the planned substitutes present a
1220 significant and even greater toxic risk than the substance in
1221 question, the Agency must make a formal finding on the
1222 record, otherwise the court can't evaluate. So to me, again,
1223 what I feel is that bad facts made a strong decision. I

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1224 think it was premature to conclude that Section 6 just
1225 couldn't work anymore.

1226 Mr. {McNerney.} All right. Thank you, Mr. Chair.

1227 Mr. {Shimkus.} Gentleman's time is expired. Chair will
1228 now recognize the gentleman from Mississippi, Mr. Harper, for
1229 5 minutes.

1230 Mr. {Harper.} Thank you, Mr. Chairman, and thank you
1231 for holding this very important hearing.

1232 If I could, I will start with Mr. Greenwood, and my
1233 question would be should overall statutory standards for
1234 science and data quality in regulatory decision-making be
1235 made more stringent?

1236 Mr. {Greenwood.} I think these questions about data
1237 quality, there are already some restrictions under the
1238 Information Quality Act that actually have been incorporated
1239 into many agencies' procedures, so I think you are seeing
1240 some of that. I do think it is difficult to, in a sense,
1241 regulate or legislate good science, so I think to some
1242 extent, this is one of these things where if you have a
1243 robust process where good science can be heard--we mentioned
1244 peer review earlier--I think these are the sorts of

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1245 mechanisms that will help improve better science and how
1246 decisions are made.

1247 Mr. {Harper.} What was the take home lesson for EPA in
1248 the 1991 corrosion fittings court decision?

1249 Mr. {Greenwood.} Well, I think we just heard my view
1250 and Mr. Rawson's view of how we reacted. The Agency reacted,
1251 I think, very strongly with a notion that as we read the
1252 opinion, we were seeing this as a case that says you need to
1253 evaluate each individual option that is less burdensome, and
1254 that one of the things we were afraid of was a tactical
1255 approach that we would see with industry would continue to
1256 put in front of us more and more alternatives and options and
1257 suboptions. And with TSCA being as broad as it was, you
1258 could do almost anything. The ability to do that was very
1259 real, so this is one of those issues that it was interesting
1260 at the time, it was the consensus of the lawyers, the
1261 managers, and the staff that this was a new world. This was
1262 a new set of burdens on the Agency that we weren't really
1263 quite ready for. Remember that at the time, the executive
1264 order that we were operating under required that we develop
1265 alternatives and look at options. We did that. However,

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1266 that was not enough for this court.

1267 Mr. {Harper.} Mr. Rawson, if I could ask you, some
1268 States have been more active than others, obviously, in
1269 regulating chemicals. Have any State requirements for
1270 chemicals been preempted by TSCA in its 37-year history?

1271 Mr. {Rawson.} By and large the answer is no, because
1272 preemption is triggered under three sections, Section 4,
1273 testing, and Section 5, new chemicals, and States typically
1274 haven't been active in those areas. And then Section 6,
1275 where we have heard that EPA has promulgated very few
1276 regulations, apart from the PCP regulations. There is at
1277 least one case out of Louisiana where a parish's attempt to
1278 prevent the siting of a PCP disposal facility was preempted,
1279 but there are other cases where narrow regulations at the
1280 State level governing the disposal of PCPs were not
1281 preempted. But by and large, thus far preemption has not
1282 been a significant factor.

1283 Mr. {Harper.} Well, let me ask you--in your opinion, of
1284 course--if TSCA is amended to require EPA to more
1285 systematically assess the safety of chemicals in commerce, do
1286 you think TSCA's preemption provision similarly needs to be

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1287 strengthened?

1288 Mr. {Rawson.} As I suggested earlier, an argument could
1289 be make that right--well, right now preemption only is
1290 triggered when EPA acts by regulation. That is similar to
1291 what happens, for example, with the CPSC. When CPSC
1292 promulgates a regulation governing a product, States can only
1293 do the same thing. They can't do something different. There
1294 is an obvious reason for that.

1295 But what we don't have here is a situation where EPA
1296 takes a very hard look, everybody with an interest comments,
1297 and concludes this product is safe, no regulations are
1298 required. That doesn't have a preemptive effect. One could
1299 argue that if it is done right once, it doesn't have to be
1300 done 50 other times. One could also argue the opposite, that
1301 States should be free to be more stringent.

1302 Under the current approach, by the way, they have the
1303 ability to petition the EPA for an exemption to be more
1304 stringent, and they have the ability to just simply say you
1305 can't use the chemical in our State. So there are--there is
1306 latitude now, even when EPA has acted, for some State role.

1307 Mr. {Harper.} Ms. Thomas, if I could ask you, how are

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1308 your members affected under current TSCA by California's
1309 green chemistry law?

1310 Ms. {Thomas.} That is a great question. Thank you very
1311 much.

1312 So we are seeing a trend at the State level towards
1313 going beyond regulating just chemicals and starting to
1314 regulate consumer products, and they are using broad
1315 definitions of consumer products that would capture autos. A
1316 perfect example is the California Safe Consumer Products
1317 regulations, which would give the Department of Toxic
1318 Substances authority to regulate up to 10 components in a 3-
1319 year period to undergo alternative assessments, and the way
1320 component is designed--defined, it would capture things,
1321 complex things like vehicle assemblies, transmissions, which
1322 in itself is a very complex component made up of multiple
1323 subcomponents and materials, and more importantly, the
1324 likelihood of exposure is minimal to nonexistent. So the
1325 idea of having to do an alternatives assessment for a
1326 transmission would be extremely costly and take many years,
1327 so imagine that times 10 in a 3-year period. So it is simply
1328 not feasible and very, very complicated.

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1329 Mr. {Harper.} And who would you expect would ultimately
1330 bear that cost, additional expense?

1331 Ms. {Thomas.} We would, the auto makers.

1332 Mr. {Harper.} Okay. All right, I yield back.

1333 Mr. {Shimkus.} Gentleman's time is expired. Chair now
1334 recognizes the gentlelady from Colorado, Ms. DeGette, for 5
1335 minutes.

1336 Ms. {DeGette.} Thank you very much, Mr. Chairman. I
1337 want to thank all the witnesses for being here. Sometimes I
1338 feel like I am in that movie ``Groundhog Day'' because I have
1339 been on this committee for 16 years now. I can't tell you
1340 how many hearings we have had where the witnesses come in and
1341 say, you know, there is consensus. Everybody agrees we need
1342 to figure out what to do about TSCA. Maybe we will have the
1343 magic moment this year, and I would be certainly happy to
1344 work with you, Mr. Chairman. I think everybody agrees, we
1345 need to do something, particularly about Section 6.

1346 And you know, when I was sitting here thinking when you
1347 talk about Section 6 of TSCA, I mean, the reason we have
1348 seven options for controls of chemicals in TSCA is they are
1349 all supposed to be actual regulatory options, not barriers

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1350 towards trying to regulate and to enforce against potentially
1351 dangerous chemicals. You know, Section 6, ever since the
1352 asbestos debacle, has just really not been an actual
1353 regulatory option for the EPA, and that is a problem. It is
1354 a problem because for whatever reason, whether you think the
1355 court decision was proper or not, the EPA doesn't feel like
1356 they can go back and go through that same regulatory process
1357 again. So I think we really need to think about why that
1358 section doesn't work on its own and what we can do,
1359 especially after you hear testimony like Ms. Reinstein gave
1360 us today about the very real health effects that asbestos is
1361 having. And I want to thank you for sharing that human
1362 moment with us.

1363 Mr. Greenwood, in your testimony you said accurately
1364 that many federal laws share a common pattern of weighing
1365 health and environmental risks against the cost and benefit
1366 of action, as well as the availability of alternatives.
1367 Under the Clean Air Act, the EPA sets national ambient air
1368 quality primary standards that protect public health
1369 regardless of cost, but implements those standards who state
1370 implementation plans that incorporate cost benefit analysis.

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1371 And so I am wondering, could a framework where chemical
1372 determinations are made based only on health risks but are
1373 implemented considering the cost or benefit of different
1374 options be more effective? What do you think about that?

1375 Mr. {Greenwood.} I mean, I think that is an option that
1376 is worth considering. You mentioned the Clean Air Act.
1377 Essentially that is what you have in the Safe Drinking Water
1378 Act as well.

1379 Ms. {DeGette.} Right.

1380 Mr. {Greenwood.} So that is a model. I think one of
1381 the questions will be kind of what factors distinguish those
1382 things that are the health-based criteria from those things
1383 that would be this unreasonable risk notion.

1384 Ms. {DeGette.} Right.

1385 Mr. {Greenwood.} And so I think that is a key factor,
1386 but certainly, that is a model that could be considered.

1387 Ms. {DeGette.} Well you know, one thing that the EPA
1388 says when thinking about how they are going to have reform is
1389 they say chemicals should be reviewed against safety
1390 standards that are based on sound science--that is a radical
1391 concept, by the way, sometimes in this committee--and reflect

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1392 risk-based criteria protective of human health and the
1393 environment. What do you think about that standard? Mr.
1394 Greenwood, what do you think about that?

1395 Mr. {Greenwood.} Well, I think--

1396 Ms. {DeGette.} That is what the EPA says that their
1397 guidelines should be.

1398 Mr. {Greenwood.} Well, I think that is what they think
1399 they do, and that is exactly what their guideline is. But I
1400 think that is certainly part of at least a component of the
1401 unreasonable risk standard that we think of as this notion of
1402 looking at the risks through looking at exposure and hazard,
1403 and then perhaps getting into the risks of the alternatives.
1404 So I think it is consistent with unreasonable risk in that
1405 sense.

1406 Ms. {DeGette.} Okay. So Mr. Srolovic, New York has
1407 been really successful in placing restrictions on dangerous
1408 chemicals. What was the process that New York used in making
1409 those determinations?

1410 Mr. {Srolovic.} The restrictions at the State level in
1411 New York have been legislative decisions, so those bans or
1412 restrictions that I mentioned work through our State

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1413 legislation process.

1414 Ms. {DeGette.} Okay, but I assume the legislature used
1415 some kind of a basis for making those determinations?

1416 Mr. {Srolovic.} Indeed. They--

1417 Ms. {DeGette.} Let me ask you this. Is it a cost
1418 benefit analysis or an analysis of alternatives? Do you
1419 know?

1420 Mr. {Srolovic.} It includes those considerations,
1421 certainly. When the--for example, the BPA ban was passed,
1422 all the voices were heard: industry, producers, users, the
1423 medical community. So there in essence was a legislative
1424 hearing process that led to the legislature making that
1425 balance that considered all of those factors.

1426 Ms. {DeGette.} And they used--did they use science?

1427 Mr. {Srolovic.} Indeed.

1428 Ms. {DeGette.} Okay, just checking.

1429 Mr. Johnson, you know, you talked about the need for
1430 States to know about some disclosure. That got me to
1431 thinking about the EPCRA statutes that relate to storage of
1432 chemicals. We could do something similar with TSCA for
1433 chemicals--for disclosure of chemicals, right, where you are

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1434 letting people know what those chemicals are but maybe not
1435 disclosing proprietary information?

1436 Mr. {Johnson.} Right. I think there is a balance in
1437 there that was--there was attempt to achieve, originally.
1438 The problem was, from what I understand, is that you--for a
1439 long time, companies take the box that said confidential--the
1440 material is automatically confidential without any much
1441 review and today, as a State official, I can go on the
1442 Internet and read material about chemicals that EPA, by
1443 statute, cannot talk to me about because it is confidential.

1444 Ms. {DeGette.} Right, right. Okay. Thank you.
1445 Thanks, Mr. Chairman.

1446 Mr. {Shimkus.} Gentlelady's time is expired. Chair now
1447 recognizes the gentleman from Ohio on the top panel, Mr.
1448 Latta, for 5 minutes.

1449 Mr. {Latta.} Well, it is good to know we have two
1450 Ohioans here on the committee, Mr. Chairman. Thanks very
1451 much, and thanks very much for our panel for being with us
1452 today.

1453 If I could ask a couple questions to you, Ms. Thomas, if
1454 I may. Are some of the public policies in conflict with

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1455 others when it comes to designing and producing a new car or
1456 truck, and kind of following up on that, how often does that
1457 happen, and is it the federal that are really conflicting
1458 with the State, or vice versa?

1459 Ms. {Thomas.} Thank you, Congressman. Yes, multiple
1460 State laws and regulations have the potential to comply with
1461 federal environmental and safety standards. You know, a good
1462 example is in order to meet the aggressive fuel economy
1463 standards for model years 2017 through 2025, my members are
1464 going to be relying heavily on lightweight materials like
1465 plastics that contain chemicals like flame retardants in
1466 them. And NTSA, under DOT, also has authority to regulate
1467 the flammability standards, so we comply with those standards
1468 by using flame retardants. But then at the State level, you
1469 are seeing bills banning different flame retardants that are
1470 used in different products, but in the same way, so the
1471 problem becomes when they--when requirements for a couch are
1472 misapplied in error to an automobile, which obviously is very
1473 different from a couch.

1474 Mr. {Latta.} Let me follow up. On page four of your
1475 testimony, you--it calls for continually--pardon me,

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1476 continuation of regulatory exemption for articles. Would you
1477 want these exemptions to preempt States, or should States be
1478 allowed to regulate beyond those exemptions on the articles?

1479 Ms. {Thomas.} Yes, so I am happy to be here today to
1480 talk about the proactive steps that my companies have been
1481 taking to reduce substances of concern from their vehicles.
1482 We work with our suppliers on maintaining a tracking database
1483 for--to ensure that restricted substances of concern do not
1484 end up in our vehicles.

1485 But the reality is a car is a very complex product with
1486 thousands of components, each made up of multiple chemicals
1487 and mixtures, so any requirements at the State level become
1488 very challenging, because they each have their own hurdles.
1489 So we would like to see a strong federal approach that
1490 focuses on specific applications with potential for actual
1491 consumer exposure. We believe that would be a more effective
1492 approach than an overly broad one.

1493 Mr. {Latta.} Thank you.

1494 Ms. {Thomas.} And yes, federal action should preempt
1495 State action on that regard.

1496 Mr. {Latta.} Thank you.

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1497 Mr. Johnson, on the last page of your testimony you have
1498 a couple things you say. The second one of the unaddressed
1499 issues is timelines for chemical reviews. And you also
1500 state--you say that perhaps similar deadlines to the EPA
1501 would be appropriate and would ensure timely actions, because
1502 States are doing certain things when it is coming to set
1503 deadlines for air and water permit issuance. But you say in
1504 the last line then that you are currently unable to suggest
1505 what those deadlines ought to be. Any idea, though, because
1506 are we running the situation where it is dragging on too long
1507 on the federal side and we need to get these things resolved,
1508 and what would you personally like to suggest?

1509 Mr. {Johnson.} I appreciate the question. You know, it
1510 is a bit of a challenge. Our members passed the resolution
1511 without any ``no'' votes, and they are a pretty broad group,
1512 the States. I think that the biggest concern for us is that
1513 when you look at your--and it has already been stated here,
1514 37 years, five chemicals, it seems to us that it needs to be
1515 quicker than that. You know, when EPA is in a process of
1516 reviewing a chemical, I think certainly for my State of
1517 Vermont, if EPA could get through that process--I don't know

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1518 whether it is somewhere 6 months, 2 years to get through all
1519 the processes that would need to happen, and make a
1520 regulatory decision on that that was transparent and open,
1521 then that would, I think, make it much easier for us to
1522 address issues of concern from the people in my State.
1523 Because what happens is they come in year after year just
1524 asking the State to do something, and we are ever hopeful
1525 that something might happen at the federal level, but 3, 4,
1526 5, 6 years later, it starts to get difficult to sort of just
1527 defer to the federal EPA on these things.

1528 Mr. {Latta.} Thank you very much, and Mr. Chairman, I
1529 see my time is expired and I yield back.

1530 Mr. {Shimkus.} Gentleman yields back his time. Chair
1531 now recognizes gentleman from Texas, Mr. Green, for 5
1532 minutes.

1533 Mr. {Green.} Thank you, Mr. Chairman, for holding the
1534 third hearing on TSCA reform. Just for the panel, I have a
1535 district in Houston in East Harris County. It is home to one
1536 of the largest collection of chemical plants in the country,
1537 and seeing TSCA that works for the affected is important by
1538 this important statute, including industry and employees and

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1539 workers and consumer advocates is vital to our constituents
1540 and the regional economy.

1541 Mr. Rawson, are you aware of any voluntary safety
1542 initiatives or product stewardship programs run by the
1543 chemical manufacturers?

1544 Mr. {Shimkus.} Can you check your microphone?

1545 Mr. {Rawson.} Thank you. Yes, there are quite a few.
1546 Some in collaboration with EPA and other stakeholders that
1547 are described in EPA's website, initiatives to phase out
1548 certain chemistries without having to determine that they
1549 present an unreasonable risk, but because sufficient concerns
1550 have been raised, and there are many private--I shouldn't say
1551 private. There are many product stewardship initiatives that
1552 are not done with the Agency but are just part of the good
1553 practices of a company. So to my view, this is certainly an
1554 important part of making sure that chemicals or manufacture
1555 processed and used safely.

1556 Mr. {Green.} So EPA has collaborated with chemical
1557 manufacturers in promoting some of the programs and--

1558 Mr. {Rawson.} Yes, it has, and in many cases, with
1559 other stakeholders at the table.

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1560 Mr. {Green.} Okay. Do you know how many rulemaking
1561 actions have been taken by the EPA under Section 6 since the
1562 corrosion-proof fittings ruling?

1563 Mr. {Rawson.} I cannot think of one. They tried for
1564 many years with respect to grout materials, but ultimately it
1565 was a very long process and controversial, but ultimately
1566 became unnecessary because personal protective equipment was
1567 developed that made it unnecessary.

1568 Mr. {Green.} Okay. So are the requirements for
1569 rulemaking under Section 6 too burdensome for EPA to
1570 regulate?

1571 Mr. {Rawson.} Well, so we can have a range of opinions
1572 at the table. My view is that the statute creates the right
1573 target. Corrosion-proof fittings read EPA the riot act a
1574 little bit, and so--and the Agency concluded let's not try
1575 that again. My feeling is they gave up a little bit too
1576 quickly. But if there are ways we can make easier without--
1577 easier to make good decisions. To me, the goal here is to
1578 make good decisions that meet all the objectives of the
1579 statute, not just to make it easier to ban chemicals. So
1580 that is what we want to do. If we make changes, we want to

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1581 make sure that anything that is done helps EPA make good
1582 decisions to consider all the factors, unreasonable risk,
1583 safety of alternatives, et cetera.

1584 Mr. {Green.} So your testimony is we really need a
1585 structure for EPA to do it? They have enough--do you think
1586 they have enough resources to be able to do it if we gave
1587 them a statutory structure?

1588 Mr. {Rawson.} I think they could use some more
1589 resources, and particularly as described in my testimony, I
1590 think it would be helpful if they really sped up the review
1591 of existing chemicals. And you know, we hear over and over
1592 again with five in 37 years, and that is the number
1593 regulated, but they have actually assessed hundreds,
1594 thousands. We need a much more transparent way to keep track
1595 of that so people can have more confidence in what is being
1596 done, and a greater throughput.

1597 Mr. {Green.} Okay. Mr. Greenwood, are the requirements
1598 for rulemaking in Section 6 too burdensome for EPA to
1599 regulate chemicals?

1600 Mr. {Greenwood.} Pardon me? I didn't--

1601 Mr. {Green.} Are the rulemaking requirements in Section

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1602 6 too burdensome for EPA to regulate chemicals?

1603 Mr. {Greenwood.} Well I think--as I have indicated a
1604 couple times now--I think there is a problem with the least
1605 burdensome alternative finding, the way it has been
1606 interpreted. I think unreasonable risk can work as a
1607 framework for it. I do think some of the procedural parts of
1608 it also may not be necessary.

1609 Mr. {Green.} If there was one change in Section 6, what
1610 would it be that you could suggest?

1611 Mr. {Greenwood.} Well, I would try to fix the
1612 corrosion-proof fitting determination on least burdensome
1613 alternative.

1614 Mr. {Green.} Ms. Reinstein, back in 2008 I was acting
1615 chair of the subcommittee, and I actually introduced a bill
1616 to ban asbestos in TSCA, and I ended up getting a lot of
1617 contacts from, you know, asbestos is a substance that comes
1618 out of the ground in California and different places. But
1619 one, I would like to thank you for your leadership and I am
1620 sorry about learning of the passing of your husband. I also
1621 represent not only an industrial area, but a lot of
1622 seafarers, and over the years, asbestosis is something that

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1623 is part of their life and their families. Can I ask how did
1624 consumers first learn about the dangers of asbestosis or
1625 asbestos?

1626 Ms. {Reinstein.} How can consumers learn about the
1627 dangers? That is a very mystifying question and it is very
1628 important because although there are 10,000 Americans that
1629 die every year, because the nature of the disease latency
1630 period makes it very difficult for the workers and families.
1631 So I think we obviously have to work with the medical
1632 community, but also go back to labor unions and increase
1633 awareness. And that is what ADO has been trying to do is
1634 work with the congressional leadership and unions to indeed
1635 just do that. But you are right, it is an ongoing problem.

1636 Mr. {Green.} Which professions are more exposed--
1637 American workers exposed to asbestos? I know, like I said,
1638 people work on ships. Our ships used to be covered with
1639 asbestos because of the threat of fire. Any other
1640 professions?

1641 Ms. {Reinstein.} That is another great question. If
1642 you use the NIOSH database, you can actually sort by industry
1643 and you can clearly see that there is a large group between

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1644 ship building, obviously anyone who served on ships like the
1645 veterans, as well as construction and also the auto industry.
1646 Those three groups of workers have been most plagued by
1647 asbestos exposure.

1648 Mr. {Green.} Okay. Mr. Chairman, I know I am out of
1649 time and I appreciate your patience.

1650 Mr. {Shimkus.} Gentleman's time is expired. Chair now
1651 recognizes gentleman from Ohio, Mr. Johnson, for 5 minutes.

1652 Mr. {Johnson of Ohio.} The other gentleman from Ohio.

1653 Mr. {Shimkus.} Last, but not least.

1654 Mr. {Johnson of Ohio.} There you go. Mr. Johnson--that
1655 is odd for me to say. I don't say that very often. I can
1656 tell by your accent you are from the other side of the
1657 family, I think. Do the States participate in EPA's
1658 implementation of TSCA today, and if so, how?

1659 Mr. {Johnson.} Well, they have in a fairly small way.
1660 I mean, I think the biggest challenge for the States is
1661 because EPA has been so challenged to get to chemicals, one
1662 of the things that States have really felt is necessary is a
1663 better way for States to sort of be the petition or somehow
1664 to get the chemicals that are coming up and being raised as

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1665 of concern among citizens in States to get EPA to look at
1666 those. It is a challenge because I think as has already been
1667 mentioned, new chemicals there is somewhat of a process for,
1668 but we have this huge group of chemicals that got
1669 grandfathered in 37 years ago, and I think certainly amongst
1670 the people in our States, the idea that they may be dangerous
1671 but we don't know, but they are in commerce and we will get
1672 back to them maybe never is just not an answer.

1673 Mr. {Johnson of Ohio.} Well maybe I am a little
1674 unclear. Are they delegated any authority under TSCA today
1675 or do they have to go ``Mother, may I'' to--

1676 Mr. {Johnson.} Well, what happens today is because EPA
1677 hasn't really assessed a lot of chemicals, they don't have to
1678 go to EPA to do it. They go to the State legislature and if
1679 they can pass a regulation like California or New York or
1680 Oregon or Washington or Maine have done--

1681 Mr. {Johnson of Ohio.} So they have to assume the
1682 authority?

1683 Mr. {Johnson.} Then they would assume it, yes.

1684 Mr. {Johnson of Ohio.} Do the States engage in
1685 chemicals management?

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1686 Mr. {Johnson.} Some States do and some States don't.
1687 It is--except for California, which is at the moment or is
1688 just about to roll out a pretty comprehensive regulation that
1689 is--they spent the last 3 years working on that would be sort
1690 of more of a system approach, most States have done it on a
1691 chemical-by-chemical basis because of a particular concern
1692 raised. And as was mentioned earlier, it usually goes
1693 through the legislature. People come in and say we need you
1694 to do something about this chemical, and so I would say that
1695 that has been--in those States that have done it, there is
1696 certainly a way to do it, but it is not particularly
1697 efficient and it means you have a spotty landscape.

1698 Mr. {Johnson of Ohio.} Why do you think some States
1699 have engaged more actively in chemical management than
1700 others?

1701 Mr. {Johnson.} Part of it is resources. Some bigger
1702 States have just been in a better position to do it, because
1703 they have been able to bring some resources to bat, either
1704 through their health department or their environmental
1705 regulatory agency. Some States have just had individual
1706 legislators who have a particular interest who have been able

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1707 to bring something forward and get it passed. States like
1708 mine have been somewhat reticent to get into the business of
1709 regulating chemicals, because we haven't worked out how we
1710 would actually pay for it. And we quite honestly think that
1711 it makes sense to do it at the federal level. Our market in
1712 Vermont is pretty small, and we don't want to somehow isolate
1713 ourselves by having a block to commerce that would just have
1714 us cut out of the market. Although we don't have a lot of
1715 industry, we do have an IBM chip manufacturing plant and the
1716 semiconductor industry is one of the ones a bit like the car
1717 industry, a lot of components involved in there. But it is
1718 really a resource issue.

1719 Mr. {Johnson of Ohio.} One final one for you, Mr.
1720 Johnson. Do some of the concerns that States have addressed
1721 fall under laws other than TSCA or agencies other than the
1722 EPA, for example, FDA or OSHA?

1723 Mr. {Johnson.} They do, although in pesticides, for
1724 instance, and Food and Drug Administration there has been a
1725 lot more activities by those agencies. It is sort of the
1726 reverse, generally pretty good. I think people feel
1727 confident. The American people seem pretty confident in

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1728 those agencies, with the occasional sort of thing that stands
1729 out as an issue, whereas TSCA is almost the other way. It is
1730 like generally not confident with the occasional thing that
1731 stands out as being okay.

1732 Mr. {Johnson of Ohio.} Sorry I didn't have any
1733 questions for the rest of you. It was just more comfortable
1734 family to family here, so thank you.

1735 Mr. {Johnson.} I appreciate it.

1736 Mr. {Johnson of Ohio.} Mr. Chairman, I yield back.

1737 Mr. {Shimkus.} Gentleman yields back his time. Chair
1738 now recognizes ranking member of the full committee, Mr.
1739 Waxman, for 5 minutes.

1740 Mr. {Waxman.} I thank you, Mr. Chairman.

1741 Today the subcommittee continues its oversight work on
1742 the Toxic Substances Control Act, tackling two important and
1743 related issues: EPA's authority to regulate harmful
1744 chemicals, and the ability of States to take action when
1745 necessary.

1746 EPA's regulation of chemicals can be an important part
1747 of protecting families from harmful environmental exposures
1748 and pollution. Unfortunately, TSCA has so far fallen short

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1749 of its objectives. Its failures have meant avoidable
1750 suffering, disease, and death. Asbestos is one of the
1751 clearest examples. Over the course of 10 years, EPA
1752 undertook a rulemaking and built an exhaustive record in an
1753 attempt to regulate this dangerous toxin, but the court threw
1754 it out and essentially, EPA gave up hope of using TSCA to
1755 address chemical risks.

1756 Mr. Rawson, you suggested in your testimony that you
1757 agree with the court's decision to throw out EPA's asbestos
1758 rule. Specifically, Mr. Rawson seems to argue that the
1759 automobile brake pads should remain on the market unless EPA
1760 can prove that brake pads not containing asbestos are safe to
1761 use.

1762 Ms. Reinstein, you know firsthand the terrible suffering
1763 associated with exposure to asbestos, and what can you tell
1764 us about the health risks posed by exposure to asbestos from
1765 brake pads?

1766 Ms. {Reinstein.} Thank you, Ranking Member Waxman, and
1767 you are also my Congressman so it is lovely to finally meet
1768 you in person.

1769 We know that asbestos is a carcinogen causing disability

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1770 and deaths. I can only tell you that those who are diagnosed
1771 with these diseases and their entire families suffer. We
1772 have many asbestos victims who have changed brakes and have
1773 inhaled and obviously been exposed to asbestos. And again,
1774 the latency period complicates it. There is no cure for any
1775 of these diseases; however, prevention is a cure.
1776 Substitutes do exist.

1777 Mr. {Waxman.} In your view, if Congress were to
1778 consider TSCA reform legislation, should we ensure that EPA
1779 be able to put an end to the ongoing asbestos exposures in
1780 this Nation?

1781 Ms. {Reinstein.} I think that if there is a bill passed
1782 that can't do that, it needs to go back to the wood shed.
1783 Clearly, any TSCA reform must ban asbestos.

1784 Mr. {Waxman.} Thank you. Ms. Thomas, you represent 12
1785 major automobile manufacturers. Do your manufacturers still
1786 use asbestos brake pads and linings on new cars?

1787 Ms. {Thomas.} To the best of my knowledge, no.

1788 Mr. {Waxman.} Do you or your members have concerns
1789 about the safety of non-asbestos brake pads?

1790 Ms. {Thomas.} I am sorry, repeat that question one more

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1791 time.

1792 Mr. {Waxman.} Do you or your members have concerns
1793 about the safety of non-asbestos brake pads?

1794 Ms. {Thomas.} No.

1795 Mr. {Waxman.} But my understanding is that brake pads
1796 containing asbestos remain on the market today. Asbestos can
1797 still be found in imported brake pads sold in the
1798 aftermarket. Isn't that correct?

1799 Ms. {Thomas.} Yes, that is my understanding.

1800 Mr. {Waxman.} Now, Mr. Rawson, I would like to go back
1801 to you. Let's put aside whether the court decided the
1802 asbestos case correctly or EPA built the best record it could
1803 over the course of its 10-year effort. Do you think that
1804 this was a good policy outcome? Do you believe it was good
1805 for the public for asbestos to remain on the market? Public
1806 health advocates and State regulators remain concerned about
1807 asbestos in brake pads. For example, some States, including
1808 California, have passed bans on asbestos brake pads.

1809 Mr. {Rawson.} Thank you for the question. First of
1810 all, I obviously don't take lightly the hazards of asbestos
1811 and share the sympathies of everybody in this room for all

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1812 families who suffered losses as a result. So I take that as
1813 seriously as everybody else. At the time of the rulemaking,
1814 new cars were already not using asbestos in brake pads.

1815 Mr. {Waxman.} Well what do you think the policy ought
1816 to be? Do you think it was a good policy outcome?

1817 Mr. {Rawson.} I am trying to answer that.

1818 Mr. {Waxman.} Do it very quickly, because my time is
1819 running out.

1820 Mr. {Rawson.} The issue was with replacement brakes,
1821 using non-asbestos brake pad on a car engineered for a brake
1822 pad could cause many more deaths than it would prevent. An
1823 EPA study said that and EPA experts said that the loss of
1824 life from putting the wrong brake pad on the car would far
1825 outweigh any benefit of the rule. The problem was EPA didn't
1826 answer that. Had they answered that--

1827 Mr. {Waxman.} Let me ask Mr. Srolovic, how important is
1828 it to maintain the ability of States to take actions like
1829 that to address health risks from chemicals when EPA can't?
1830 It is an important issue. I can't support legislation that
1831 would undermine the few protections that are in current law
1832 or that would preempt successful State efforts to protect the

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1833 public. What do you think?

1834 Mr. {Srolovic.} Congressman, I think it is very
1835 important to preserve the traditional power of States to take
1836 legislative regulatory action under their traditional powers
1837 to protect their citizens and their environment from the
1838 hazards posed by toxic chemicals.

1839 Mr. {Waxman.} Thank you. Well, I appreciate that. I
1840 am sorry to have cut you off, but my time is already over and
1841 I have to yield back to the chairman to call on another
1842 member.

1843 Mr. {Shimkus.} And he knows how tough I am on time, so
1844 thank you. I thank the ranking member. Chair now recognizes
1845 my colleague from Illinois, Ms. Schakowsky, for 5 minutes.

1846 Ms. {Schakowsky.} Thank you, Mr. Chairman. I had some
1847 questions for Mr. Greenwood which really go back to the
1848 history of TSCA.

1849 You made the argument that the EPA struggled over
1850 resource allocation in the early years of TSCA, and here we
1851 are almost 40 years later and I can't imagine that efforts by
1852 this body to get funding--by this body to gut EPA funding--we
1853 are talking about cutting, including the interior and

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1854 environmental appropriations bill, by 34 percent, a 34
1855 percent cut to the EPA have made it much better.

1856 But here is my question. What TSCA-related risks to
1857 human health and the environment can be anticipated if the
1858 EPA were severely underfunded?

1859 Mr. {Greenwood.} That is a major question. It is hard
1860 to translate that, a budget cut into specific actions. I
1861 think the budget situation at EPA, as I understand it, is
1862 that they are very limited on what they can do on new
1863 chemicals. The staffing is as lean as it can be--

1864 Ms. {Schakowsky.} I am sorry, on new chemicals?

1865 Mr. {Greenwood.} On new chemicals. And as to existing
1866 chemicals, they have started to lay out a fairly, I think,
1867 constructive plan with a list of 83 work plan chemicals that
1868 they are trying to address, and they have a budget for it and
1869 I think it is something that I think we all would like to see
1870 progress. They are going to be using good science to assess
1871 and then decide what they can do from a risk management point
1872 of view. My guess is that that is the area that is most
1873 likely to be hurt if there are severe budget cuts, and I
1874 think it is not in the interest of most of us.

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1875 Ms. {Schakowsky.} Thank you. It seems to me that the
1876 EPA's effort to address asbestos is illustrative of some of
1877 the underlying problems of TSCA and the existing chemicals.
1878 As you said in your testimony, asbestos was seen as a test
1879 case to prove the efficacy of TSCA. Still, it took 10 years
1880 from the advance notice of proposed rulemaking to the
1881 official ban, and that ban was overturned in 2 years and
1882 despite the findings that there are no safe levels for
1883 asbestos, many products from kids' toys to car brakes, which
1884 we were just talking about, have been found to contain
1885 asbestos since 1991. And as Ms. Reinstein said, 30 Americans
1886 die each day from preventable asbestos-caused disease. So
1887 what does the asbestos case tell us about TSCA and how should
1888 the law be changed, amended, fixed to ensure that dangerous
1889 products, you know, many years and decades later aren't still
1890 on the market?

1891 Mr. {Greenwood.} Well, I think that the case has told
1892 us that there are parts of the structure of the statute that
1893 prevent problems from getting decisions made. I have
1894 mentioned this now multiple times. The least burdensome
1895 alternative--

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1896 Ms. {Schakowsky.} I apologize for coming so late.

1897 Mr. {Greenwood.} No, that is okay. Least burdensome
1898 alternative provision and how it was interpreted by the
1899 court, I think most of us felt that EPA at the time after the
1900 decision came down was a surprise and was something that
1901 would have long term effects. I think it is important to
1902 recognize though that we didn't necessarily think that the
1903 other parts of the statute couldn't work. I don't recall any
1904 discussion where people thought that unreasonable risk was an
1905 inappropriate standard. It was very focused on this one
1906 issue, so I think for most of us at EPA at the time, that was
1907 the major takeaway message of concern.

1908 Ms. {Schakowsky.} Thank you. Again, I apologize for
1909 having you repeat it, but I appreciate your indulgence.

1910 Thank you. I yield back, Mr. Chairman.

1911 Mr. {Shimkus.} Gentlelady yields back her time. The
1912 chair wants to thank the panelists here today. Again, this
1913 is the third of a set of hearings on TSCA. As my colleague
1914 from Colorado said, this is one everybody would like us to do
1915 something on, hopefully something positive, and it is kind of
1916 exciting to open up the can of worms and start pulling them

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1917 out and see what works and what doesn't. So I appreciate
1918 your attendance and look forward to working with you. I
1919 appreciate the involvement of the Minority and the very
1920 active questioning and the like.

1921 I would like to ask unanimous consent for a letter to
1922 Mr. Waxman from Californians for a Healthy and Green Economy,
1923 as well as a press statement from Change to be submitted into
1924 the record, also a letter from the American Alliance for
1925 Justice that was sent to myself and Mr. Tonko concerning
1926 State tort law to be submitted for the record, and a
1927 resolution from ECOS, which they have been very helpful over
1928 my time as a chairman in dealing with issues, referenced by
1929 Mr. Johnson in his testimony. That will all be submitted
1930 into the record. Without objection, so ordered.

1931 [The information follows:]

1932 ***** COMMITTEE INSERT *****

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|
1933 Mr. {Shimkus.} And with that, I would like to declare
1934 the hearing adjourned.

1935 [Whereupon, at 3:52 p.m., the Subcommittee was
1936 adjourned.]