

Civil Justice Through the Courts
c/o Center for Justice & Democracy at New York Law School
New York Law School
185 West Broadway
New York, NY 10013

November 12, 2013

The Honorable John Shimkus, Chairman
Subcommittee on the Environment and the Economy
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Paul Tonko, Ranking Member
Subcommittee on the Environment and the Economy
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Shimkus and Ranking Member Tonko:

We are members of a law school clinic, Civil Justice Through the Courts, at New York Law School. This is a public policy clinic, the mission of which is to raise awareness about attacks on access to the civil justice system.

We are writing to express our concern about the Chemical Safety Improvement Act (C.S.I.A), S. 1009, and more specifically, Section 15 of the bill dealing with preemption. This section of the bill expressly preempts state regulations regarding chemical safety and imposes the E.P.A.'s safety determinations upon state and federal courts. Such preemption provisions will serve to usurp the states' necessary authority to protect their citizens when they are best situated to understand and deal with the relevant, local chemical safety concerns, and fails to expressly indicate Congress' intent to leave state tort remedies in tact.

The C.S.I.A. is designed to remedy major flaws in the Toxic Substance Control Act of 1976 (T.S.C.A.). But even with some improvements contained in the bill, federal regulation cannot fully protect the public health and safety alone. Today, only a few hundred of the 60,000-plus chemicals that came under the law's coverage in 1976 have been thoroughly assessed by the E.P.A.

States will always need to play a critical role protecting the health and safety from toxic chemicals. For example, California's recent Green Chemical Initiative is a progressive plan to identify toxic chemicals in everyday products and figure out safer substitutes. Though California has provided some of the most comprehensive and extensive protections and safeguards for

chemicals, other states have also implemented and continue to improve their own chemical safety regulations.

Though the C.S.I.A. takes steps to improve some T.S.C.A. flaws, it still provides a very low safety standard for chemical manufacturers. With such a low standard in place and the apparent limitations facing the E.P.A. in enforcement of these laws, states must be able to compensate for the safety risks not effectively dealt with under the federal regime. Even if the standard were raised, state law provides another layer of protection regarding chemical safety that is likely more tailored to the specific needs of its citizens. And state tort remedies serve an equally critical function, allowing victims to be compensated while providing chemical companies with the proper economic incentive to operate safely.

Furthermore, the C.S.I.A. would prevent relevant evidence from getting to the factfinders in private litigation involving chemical safety. Considering the limited resources of the E.P.A. and its struggle with enforcement of its chemical safety regulations, affording its safety determinations dispositive effect on federal and state litigation would prevent juries and judges from reaching the most truthful and equitable judgments. This would be detrimental to the parties involved in such litigation by preventing them from obtaining the proper outcome when the truth is unknown.

The Chemical Safety Improvement Act should be a floor and not a ceiling. Eliminating the states' ability to protect their citizens through both regulation and tort law should not be a goal or result of chemical safety reform. Rather, the Act and state law should work together to afford individuals a greater level of protection against hazardous and toxic chemicals. In its current state, with the inclusion of section 15, the Act will fail to achieve this goal.

Thank you for your time and consideration of our views on this matter. If you have any questions, feel free to contact Hayley Pine, Hayley.Pine@law.nyls.edu, or Zach Perecman Zachary.Perecman@law.nyls.edu.

Sincerely,

Law Student Clinic Members
Civil Justice Through the Courts
New York Law School