



ENVIRONMENTAL HEALTH STRATEGY CENTER

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The Honorable James Inhofe
Chairman, U.S. Senate Committee on Environment and Public Works
205 Russell Senate Office Building
Washington, DC 20510

The Honorable Barbara Boxer
Ranking Member, U.S. Senate Committee on Environment and Public Works
112 Hart Senate Office Building
Washington, DC 20510

Re: Federal Legislation to Fix Our Broken Chemical Safety System

Dear Chairman Inhofe and Ranking Member Boxer,

Thank you for this opportunity to share with you our concerns about proposed legislation to update the Toxic Substances Control Act of 1976 (TSCA). I have a unique perspective, having worked on state-based chemical policy over the last 35 years, including on California's Proposition 65 and Maine's Kid Safe Products Act. I've also been deeply immersed in TSCA reform during the last decade.

Meaningful TSCA reform can only be measured by the extent to which it significantly improves protection of the health of American families from exposure to toxic chemicals in everyday life.

Therefore, we OPPOSE S.697 (Udall-Vitter), The Frank R Lautenberg Chemical Safety for the 21st Century Act, unless it's fixed to eliminate its proposed rollbacks in current law. The Udall-Vitter bill would significantly weaken state authority to regulate chemicals, and diminish EPA authority to regulate unsafe chemicals in consumer products, including imported articles, among many other problems with the bill.

By the same measure, we SUPPORT S.725 (Boxer-Markey), The Alan Reinstein and Trevor Schaefer Toxic Chemical Protection Act. The Boxer-Markey bill provides for stronger state authority than current law, and improves EPA's ability to protect public health from dangerous chemicals compared to S.697.

As an overarching concern, S.697 would radically weaken State authority to regulate dangerous chemicals compared to current law. I have attached a chart that details this gross federal infringement on States' rights embodied in the bill.



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Among the major specific problems with the S.697 that remain to be fixed include:

1. The Udall-Vitter bill blocks States from taking action on “high priority” chemicals *even without any action* by the U.S. EPA on the same chemical;
2. The Udall-Vitter bill gives a free pass to toxic products that illegally cross the U.S. border, by weakening EPA’s import certification authority;
3. The Udall-Vitter bill creates a new high hurdle before EPA can regulate a proven unsafe chemical in a consumer product, making it harder to restore consumer confidence in product safety.

We appreciate your work to fix America’s broken chemical safety system. We urge you to make further changes in the proposed legislation to address our outstanding concerns. With the health of future generations at stake, the EPW Committee should not just accept any reform; instead wait to support only the right reform.

Thank you for your consideration.

Respectfully,

Michael Belliveau
Executive Director

cc: Members, U.S. Senate Committee on Environment and Public Works
The Honorable Tom Udall

Udall-Vitter Bill (S.697) Would Seriously Weaken State Authority to Regulate Toxic Chemicals

Proposed legislation would significantly expand federal preemption of the States in the Toxic Substances Control Act (TSCA)

Policy	Current Law	Udall-Vitter	Impact on the States
Savings Clause	Allows a States to freely regulate chemicals <i>unless</i> explicitly preempted by TSCA	Preempts a State from regulating chemicals <i>unless</i> explicitly allowed by TSCA	Any uncertainty in State authority would be interpreted in favor of federal preemption
Timing of Preemption	Preempts a State from restricting a chemical upon the final effective date of an EPA rule to restrict that chemical	Preempts a State from restricting a chemical upon naming the chemical a “high priority.” That’s 7 years <i>before</i> the final deadline for EPA action on unsafe chemicals.	Creates a “regulatory void” where States can’t act and EPA hasn’t acted. Unsafe chemicals can escape <i>any</i> action for more than 10 years, after missed deadlines and lawsuits
Co-Enforcement	Allows a State to adopt a rule identical to an EPA rule adopted under TSCA, enabling States to co-enforce the federal law	Eliminates co-enforcement authority for all States	Seriously undermines TSCA enforcement capacity across the country, resulting in less compliance and protection
State Waste Disposal Laws	Always allows a State to restrict the disposal of products containing chemicals, <i>without</i> ever being federally preempted	Preempts a State from restricting a chemical under waste authority if it conflicts or is inconsistent with an EPA rule to restrict that chemical	States have used waste authority to ban the use & disposal of mercury-added products. Similar actions could be preempted in the future
State Phase-Outs	Always allows a State to prohibit the use of a chemical (other than for use in chemical manufacturing)	Only use restrictions adopted prior to Jan. 1, 2015 are grandfathered in. Future bans can be preempted.	Now-pending state bans should be grandfathered in if adopted prior to date of enactment of reform
State Waivers	States may apply to EPA for a waiver from preemption if the state restriction doesn’t violate the federal rule, provides a significantly higher degree of protection, <i>and</i> doesn’t unduly burden interstate commerce	States may apply to EPA for a waiver from preemption if there’s compelling State or local conditions , the state restriction does not unduly burden interstate commerce or violate any federal rule, <i>and</i> is based on sound science	Creates a nearly impossible hurdle for States to waive preemption. Toxic chemicals in consumer products affect states uniformly, without creating compelling local conditions like in the case of regional air or water pollution